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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

**NATIONAL BEEF CALIFORNIA, LP'S
SUMMARY OF ARGUMENT**

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Attorneys for Discharger:

National Beef California, LP

1 National Beef California, LP ("National Beef") submits the following Summary of
2 Argument in opposition to the allegations contained in the Administrative Civil Liability
3 Complaint R7-2014-0041 (the "Complaint") issued by the California Regional Water Quality
4 Board for the Colorado River Basin Region. The Complaint alleges that the City of Brawley
5 violated its NPDES permit limits for Biochemical Oxygen Demand ("BOD"), ammonia and
6 Total Suspended Solids ("TSS"), and argues that because the City violated its limits, National
7 Beef must have caused the violations by pass-through and interference for the entire time
8 National Beef owned the plant. This claim is inconsistent with the applicable law and is belied
9 by the evidence in the record in this proceeding.

10 **1. The Complaint Fails to Identify Any Discharges from the National Beef Plant that**
11 **Allegedly Caused Pass Through or Interference.**

12 In the present case, the Regional Board failed to identify a single discharge from
13 National Beef that allegedly caused an NPDES violation by pass through or interference.
14 Instead, the Complaint refers only to the Brawley WWTP violations and purports to charge
15 National Beef for each and every one of those violations. That is wholly inappropriate as
16 National Beef cannot be charged for discharges from the Brawley WWTP; National Beef can
17 only be charged for discharges from its own facility that are proved to cause the NPDES permit
18 violations at the Brawley WWTP by pass through or interference.

19 The Complaint does not identify a single discharge from the National Beef plant that
20 allegedly caused the Brawley WWTP to violate its NPDES permit. Instead, the Complaint
21 focuses exclusively on the discharges from the Brawley WWTP that constituted violation of the
22 NPDES permit and contends without any proof that National Beef is liable for these discharges.
23 That is not the law.

24 In light of the complete failure of the Complaint to identify a single discharge of
25 National Beef that is alleged to cause pass through or interference and the improper attempt to
26 charge National Beef based solely upon discharges from the Brawley WWTP, the Complaint
27 must fail as a matter of law.

28 ////

1 **2. National Beef Did Not Cause Any Violation of the NPDES Permit at the Brawley**
2 **WWTP**

3 The fundamental failing of the Complaint and the evidentiary submission offered in
4 support of the Complaint is that there is nothing to support the assumption that National Beef
5 caused the NPDES violations at the Brawley WWTP. The law is very clear that National Beef
6 cannot be responsible for pass through or interference if the Brawley WWTP was the cause of
7 the NPDES violations. That is exactly what occurred in this case.

8 The record of this case leads to the inescapable conclusion that at all times relevant to
9 the NPDES permit violations alleged in the Complaint, the Brawley WWTP was unable to
10 properly treat ammonia as a result of the engineering, design and operation of the Brawley
11 WWTP itself. The discharge from National Beef had nothing to do with the failure of the
12 Brawley WWTP. The Brawley WWTP would have violated its NPDES permit limits included
13 in the Complaint even if National Beef had not discharged to the system. This fact alone is
14 fatal to the Complaint and requires it be dismissed.

15 The Regional Board has made no effort to correlate the discharge data from the
16 National Beef plant with the NPDES violations at the Brawley WWTP National Beef is
17 accused of causing. Instead, the contention is that National Beef is responsible for *every*
18 NPDES violation at the Brawley WWTP without any consideration of National Beef's actual
19 conduct and without reference to a single, individual discharge FROM the National Beef
20 facility. This strict liability approach to pass through and/or interference is contrary to the
21 controlling authority and cannot properly form the basis of any liability in this case.

22 **3. The Claims Against National Beef are Barred as a Matter of Law By 40 C.F.R.**
23 **§ 403.5(a)(2).**

24 Pursuant to 40 C.F.R. 403.5(a)(2), if National Beef did not know or have reason to
25 know that its discharge, alone or in conjunction with the discharges of others would cause pass
26 through or interference and National Beef was in compliance with local limits designed to
27 prevent pass through or interference it is entitled to an affirmative defense to all allegations in
28 the Complaint as a matter of law. The record in this proceeding conclusively establishes that

1 National Beef is entitled to the benefit of this defense for a vast majority of the time period at
2 issue in the Complaint.

3 The first element of the affirmative defense requires the discharger to demonstrate that
4 it did not know or have reason to know that its discharges, alone or in conjunction with
5 discharges of other industries, businesses, and residents, would cause pass through or
6 interference. National Beef demonstrates this through:

- 7 1) A written statement from the City that ammonia discharges of 30 mg/l or less
8 could be adequately handled by the City WWTP;
- 9 2) The City's application of local limits to the National Beef discharges which were
10 specifically derived to prevent pass through or interference;
- 11 3) 162 Notices of Violation issued by the City to National Beef to enforce local
12 limits for a total of \$723,000 in administrative fines, all paid by National Beef,
13 and a total of \$2,355,384 in surcharges to implement local limits for discharges
14 of the pollutants at issue in the Complaint in which there were no allegations of
15 pass through or interference;
- 16 4) Ongoing and consistent communication with the City regarding wastewater
17 discharges during which the City at no time alleged or indicated pass through or
18 interference was occurring or was threatened as a result of National Beef's
19 discharges; and
- 20 5) National Beef's \$13,552,000 million dollars spent on beef plant pretreatment
21 system upgrades to comply with City local limits.

19 The second element of the applicable affirmative defense is that a local limit designed
20 to prevent pass through and/or interference was developed in accordance with section 403.5(c)
21 for each pollutant that caused pass through or interference and the discharger was in
22 compliance with each such local limit directly prior to and during the alleged pass through or
23 interference. In the present case, the Wastewater Pretreatment Ordinance, Chapter 22, Art. II
24 limits for ammonia, BOD, and TSS were developed in accordance with section 403.5(c) and
25 National Beef discharges were in compliance with those limits or implementing some of the
26 \$13,552,000 in pretreatment system upgrades for compliance at all times relevant to the
27 allegations in the Board Complaint.

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1 **4. The Complaint against National Beef is Barred as a Result of the Fact that The**
2 **City has Already Enforced the Federal National Pretreatment Regulations against**
3 **National Beef.**

4 At all times relevant to the Complaint, the City of Brawley had a valid Wastewater
5 Pretreatment Ordinance to implement Federal and California law prohibitions against pass
6 through and interference and has enforced the ordinance against National Beef. The Regional
7 Board is barred from enforcing these same requirements against National Beef to prevent
8 duplicate enforcement of 40 C.F.R. Part 403 and pursuant to the doctrine of res judicata.

9 The Complaint impermissibly assesses administrative civil liability penalties for alleged
10 violations of prohibitions against pass through and interference that already have been enforced
11 by the City of Brawley under Wastewater Pretreatment Ordinance, Chapter 22, Art. II. (Exhibit
12 983) The Regional Board's action duplicates 163 administrative penalty actions under which
13 the City fined National Beef \$723,000 and seeks \$3,750,000 for the same alleged conduct. This
14 results in windfalls to the City and the Regional Board and impermissibly subjects National
15 Beef to dual enforcement and double fines. Such enforcement is barred as a matter of law.

16 **5. The Regional Board's Claims in the Complaint are Barred by California Code of**
17 **Civil Procedure Section 338(I) as Applicable Through the Doctrine of Laches.**

18 In California, the statute of limitations for civil actions brought to enforce the Porter
19 Cologne Water Quality Control Act is three years. While statutes of limitations are generally
20 inapplicable to administrative proceedings, they do provide a measure of how far back it is
21 appropriate for an agency to reach under the doctrine of laches. A claim will be barred by
22 laches if the claimant has unreasonably delayed or been negligent in asserting the claim, and
23 when that delay or negligence has prejudiced the party against whom relief is sought.

24 Here, the Regional Board has waited almost a decade before bringing claims against
25 National Beef. In that time, witness memories have faded, treatment facilities have been
26 changed, and key evidence that could exonerate National Beef has been lost. National Beef has
27 therefore been prejudiced by the Regional Board's failure to bring its claims in a timely
28 manner. As a result, the Complaint must be dismissed and National Beef discharged from any
claim of liability thereunder.

1 **6. The Regional Board has Consistently Failed to Adhere to the Necessary Separation**
2 **of Function Requirements to Ensure National Beef Receives a Fair Hearing Before**
3 **an Unbiased Tribunal in Violation of Due Process Requirements.**

4 The Regional Board initiated this proceeding against National Beef attempting to assess
5 fines for alleged pass through and interference with the Brawley WWTP. Throughout the
6 process, the individuals acting on behalf of the Regional Board have so intertwined the
7 functions of investigation, prosecution and advising the Board that the proceeding against
8 National Beef violates National Beef's constitutional right to Due Process. In the words of the
9 Regional Board's advisory staff, the Regional Board's advisory team "**serves no purpose**
10 **other than to present the facade of fulfilling the court ordered "separation of powers"**
11 **function within the organization. . . . [and] is a sham."** As a result, the Regional Board is
12 incapable of providing National Beef with a fair hearing before an impartial tribunal, and the
13 Complaint must be dismissed.

13 **7. The Hearing Procedures and Deadlines in this Matter do not Afford National Beef**
14 **Rights of Due Process.**

15 The Assistant Executive Officer of the Regional Board has stated that this "is the largest
16 penalty he has seen in 17 years working in the Colorado River Basin region." The hearing
17 procedures offered and the times for and timeframes between events in the Table of Important
18 Deadlines in the Public Notice do not reflect an appreciation of the seriousness of this matter
19 and thus paint the \$3,750,000 penalty as a *fait accompli*. The complaint alleges 375 instances of
20 pass through and interference. This is not a straight forward enforcement action based upon
21 effluent testing data from National Beef plant wastewater discharges. The allegations in the
22 Board Complaint require proof that National Beef's discharges caused pass through of or
23 interference to the Brawley WWTP. Therefore, this action necessarily will involve an
24 examination of the City of Brawley WWTP, influent to the WWTP, and operation of the
25 WWTP over the time period of the allegations. These areas of inquiry have required extensive
26 discovery of documents and data from third parties to date. The reality of this process is that it
27 would take several more months to adequately gather all of the relevant data and conduct
28 depositions. National Beef would then be able to analyze the data in order to properly prepare

1 its defenses to the allegations. It was simply not possible for National Beef to complete the
2 investigation and analysis needed to fully and completely defend the allegations by the
3 September 18, 2014 deadline for its submission of evidence. In spite of this handicap, National
4 Beef has presented arguments that are more than sufficient to defeat the Complaint. That
5 notwithstanding, it has been forced to do so without the time or ability to fully discover and
6 investigate issues relevant to this defense.

7 In addition, 2.5 hours of hearing time in the context of this Complaint is not adequate by
8 any standard to afford adequate due process to National Beef and, therefore, National Beef
9 reasserts its request for a minimum of 10 hours to defend the allegations in the Complaint.

10 **8. The Damages Alleged in the Complaint are Inappropriate and Contrary to**
11 **Reasonable Accounting Standards and Applicable Law.**

12 The BEN model and the related inputs utilized by CRWQCB with respect to National
13 Beef do not appropriately reflect the facts and circumstances of National Beef's case, nor do
14 they properly calculate the alleged economic benefit derived by National Beef. The
15 CRWQCB's use of the BEN model is inappropriate for a number of reasons, including:

- 16 a) The BEN model assumes a company is out of compliance, and as a result
17 avoided or delayed pollution control costs; National Beef has done neither.
- 18 i. National Beef was in compliance for a significant portion of the purported
19 period of non-compliance.
- 20 ii. National Beef neither delayed nor avoided compliance spending in the
21 purported period of non-compliance. In fact, National Beef spent
22 approximately \$1.8 million in wastewater O&M expenses and
23 approximately \$10.3 million in wastewater capital expenditures.
- 24 b) The CRWQCB inappropriately used a prospective proposal from 2013 as the
25 sole basis for determining the compliance efforts National Beef allegedly should
26 have undertaken in 2006 – a proposal that was irrelevant to National Beef's
27 2006 wastewater treatment system.

28 /////

- 1 c) The use of the BEN model and the subsequent calculation of the purported
2 economic benefit are only as good as the inputs utilized to run the model. The
3 CRWQCB analysis utilized questionable assumptions for its inputs that lacked
4 analytical rigor, and resulted in significant overstatements of the purported
5 benefits, including:
- 6 i. Failing to provide credit for costs actually incurred to achieve compliance --
7 up to \$1.8 million in O&M and \$10.3 million in capital;
 - 8 ii. Classifying plant capacity and other unrelated improvement costs as
9 compliance costs, inappropriately overstating the required costs to achieve
10 compliance;
 - 11 iii. Classifying costs to replace functioning equipment as “avoided costs”, again
12 inappropriately overstating the required compliance costs;
 - 13 iv. Exacerbating its overstatement by including these operational costs and
14 redundant compliance costs in its inputs for O&M expenses; and
 - 15 v. Utilizing an inappropriate period of purported non-compliance.

16 In short, the above flaws that occur throughout the CRWQCB’s application of the BEN model
17 and subsequent economic benefit calculation make the BEN model’s use in this matter
18 inappropriate.

19 Moreover, the Complaint proposes an administrative civil liability penalty of
20 \$3,750,000 on National Beef. The Regional Board provides its penalty calculation
21 methodology in Attachments K and L to the Complaint. The Regional Board's penalty
22 calculation is contrary to Sections 13385(c)(1) and 13385(e) of the California Water Code and
23 the State Water Control Board's Water Quality Enforcement Policy, effective May 20, 2010.
24 The Regional Board failed to take into account the factors required to be evaluated pursuant to
25 Section 13385 of the California Water Code. Instead, the Regional Board made a blanket
26 assessment of the maximum penalty possible, and penalized National Beef for identical
27 violations as many as five times over. To the extent the Regional Board did evaluate the factors

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1 required under Section 13385(e) in its Attachment K analysis, the Regional Board made
2 erroneous determinations of fact and law.

3 **CONCLUSION**

4 There is no legal or factual basis for any finding of liability against National Beef in the
5 present proceeding. The record demonstrates that National Beef did not cause any violation of
6 the Brawley NPDES permit through pass through or interference. Moreover, the outrageous
7 claim for a \$3,750,000 penalty is inconsistent with proper accounting standards and the
8 applicable law. Finally, the process has deprived National Beef of its Constitutional Due
9 Process rights at every turn. The only appropriate resolution of this proceeding is a dismissal
10 of all claims.

11
12 Dated: September 18, 2014

STINSON LEONARD STREET LLP



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14
15 By:

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28 **National Beef California, LP**

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

NATIONAL BEEF CALIFORNIA,
LP'S MEMORANDUM OF LAW
REGARDING THE REQUISITE
PROOF OF CAUSATION PURSUANT
TO 40 C.F.R. 403.3

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Attorneys for Discharger:

National Beef California, LP

1 National Beef California, LP ("National Beef") submits the following
2 memorandum of law regarding the requisite proof of causation pursuant to 40 C.F.R.
3 403.3 and states as follows:
4

5 INTRODUCTION

6 In the Administrative Civil Liability Complaint R7-2014-0041 (the "Complaint")
7 issued by the California Regional Water Quality Board for the Colorado River Basin
8 Region it is alleged National Beef violated the Clean Water Act national pretreatment
9 standards by causing pass-through and interference with the City of Brawley's Publicly
10 Owned Treatment Facility ("POTW"). The Complaint alleges that the City of Brawley
11 violated its NPDES permit limits for Biochemical Oxygen Demand ("BOD"), ammonia
12 and Total Suspended Solids ("TSS"), and argues that because the City violated its
13 limits, National Beef must have caused pass-through and interference. This claim is
14 inconsistent with the applicable law and is belied by the evidence in the record in this
15 proceeding.

16 Before any liability may be imposed on an Industrial User under the theory of
17 pass through or interference, the charging entity must prove two prerequisite elements:
18 (1) that a violation of an NPDES permit has occurred and (2) that the Industrial User's
19 discharge *caused* the violation to occur through pass through or interference. This
20 causation element is defined as "tort" causation in the applicable rule. Accordingly,
21 proof of causation must be based upon the specific facts of any situation and is not
22 established by presumption or the strict liability standard suggested in the Complaint.
23 The fact that an Industrial User is discharging wastewater to a POTW at the time a
24 NPDES violation occurs is not sufficient to establish any liability on the part of the
25 Industrial User. Initially, the Regional Board is required to specifically identify the
26 Industrial User's discharges that it contends caused the NPDES violations at issue. If
27 the POTW should have been able to treat the wastewater received from an Industrial
28 User in those specifically identified discharges and it is the failure of the POTW that

1 causes the NPDES violations at issue, pass through and interference cannot have
2 occurred.

3 In the present case, the Regional Board failed to identify a single discharge from
4 National Beef that allegedly caused an NPDES violation by pass through or
5 interference. Instead, the Complaint refers only to the Brawley WWTP violations and
6 purports to charge National Beef for those violations. That is wholly inappropriate as
7 National Beef cannot be charged for discharges from the Brawley WWTP; National
8 Beef can only be charged for discharges from its own facility that are proved to cause
9 the NPDES permit violations at the Brawley WWTP. Further, the evidence establishes
10 that there is no correlation between the discharges from the National Beef plant and the
11 NPDES violations alleged in the Complaint. The Brawley POTW consistently violated
12 its NPDES permit before the subject beef plant was even constructed. The evidence
13 establishes that even if the beef plant had not discharged any wastewater to the Brawley
14 POTW, the NPDES violations alleged in the Complaint would have occurred anyway.
15 Indeed, the Regional Board has admitted that this is the case. The evidence is
16 overwhelming that the cause of the NPDES violations was the design and operation of
17 the Brawley POTW and not National Beef. This fact is best demonstrated by the
18 undisputable fact that the NPDES violations only ceased once the Brawley POTW
19 completed and implemented comprehensive changes to its design and operation. As a
20 result, the Complaint must be dismissed and National Beef discharged from any claim
21 of liability thereunder.

22 **STATEMENT OF LAW**

23 Under the Clean Water Act implementing regulations, interference is defined as:

24 [A] Discharge which, alone or in conjunction with a discharge or
25 discharges from other sources, both:

26 (1) Inhibits or disrupts the POTW, its treatment processes or
27 operations, or its sludge processes, use or disposal; and

1 (2) Therefore is a cause of a violation of any requirement of the
2 POTW's NPDES permit (including an increase in the magnitude or
3 duration of a violation) or of the prevention of sewage sludge use or
4 disposal in compliance with the following statutory provisions and
5 regulations or permits issued thereunder (or more stringent State or local
6 regulations): Section 405 of the Clean Water Act, the Solid Waste
7 Disposal Act (SWDA) (including title II, more commonly referred to as
8 the Resource Conservation and Recovery Act (RCRA), and including
9 State regulations contained in any State sludge management plan prepared
10 pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic
11 Substances Control Act, and the Marine Protection, Research and
12 Sanctuaries Act.

13 40 CFR 403.3(k).

14 Pass-through is defined as:

15 [A] Discharge which exits the POTW into waters of the United
16 States in quantities or concentrations which, alone or in conjunction with a
17 discharge or discharges from other sources, is a cause of a violation of any
18 requirement of the POTW's NPDES permit (including an increase in the
19 magnitude or duration of a violation).

20 40 CFR 403.3(p).

21 ANALYSIS

22 1. The Complaint Fails to Identify Any Discharges from National Beef and, 23 Accordingly Fails as a Matter of Law

24 "The term Indirect Discharge or Discharge means the introduction of pollutants
25 *into* a POTW from any non-domestic source regulated under section 307 (b), (c) or (d)
26 of the Act." 40 C.F.R. § 403.3(i) (emphasis added). Therefore, in order for the
27 Regional Board to charge National Beef with any violation of the Clean Water Act
28 pursuant to pass through or interference, the Regional Board must identify the
"Discharges" **FROM** National Beef **TO** the Brawley WWTP that it contends caused the
Brawley WWTP to violate its NPDES permit.

The Complaint does not identify a single "Discharge" from the National Beef

1 plant that allegedly caused the Brawley WWTP to violate its NPDES permit. Instead,
2 the Complaint focuses exclusively on the discharges from the Brawley WWTP that
3 constituted violation of the NPDES permit and contends without any proof that National
4 Beef is liable for these discharges. That is not the law.

5
6 The Complaint's "Alleged Violations of Pass Through and/or Interference" from
7 paragraph 36 through 41 discuss only discharges from the Brawley WWTP. Not one
8 "Discharge" from National Beef's facility is mentioned in this discussion. Instead, the
9 Regional Board simply concludes the following:

10
11 42. Because the city of Brawley violated its NPDES Permit ammonia
12 Effluent Limitations contained in WDRs Order R7-2005-0021 and its
13 NPDES Permit Effluent Limitations and Receiving Water Limitations for
14 acute and chronic toxicity contained in WDRs Orders R7-2005-0021 and
15 R7-2010-0022, following NBC's commencement of discharges to the
16 Brawley WWTP in June 2006, and because the discharge from NBC was
17 a significant source of ammonia which caused and/or contributed to the
18 violations and their magnitude and frequency, the discharge from NBC
19 into the Brawley WWTP consistently caused Pass Through and/or
20 Interference from June 2006 until approximately July 2011.

21 Complaint, ¶ 42. Therefore, instead of identifying a single "Discharge" from National
22 Beef, the Complaint simply assumes that National Beef is responsible for every NPDES
23 violation at the Brawley WWTP. Again, that is not the law.

24 In light of the complete failure of the Complaint to identify a single "Discharge"
25 of National Beef that is alleged to cause pass through or interference and the improper
26 attempt to charge National Beef based solely upon discharges from the Brawley WWTP
27 the Complaint must fail as a matter of law.

28 **2. National Beef Did Not Cause Any Violation of the NPDES Permit at the
Brawley WWTP**

In *National Association of Metal Finishers v. E.P.A* ("NAMF") 719 F.2d 624,

1 640 (3d Cir. 1983), the Court found that "neither the language of the [Clean Water] Act
2 nor the intent of Congress appears to contemplate liability without causation." *Id.*¹ First,
3 the Court looked at Sections 307(b) and (c) of the Clean Water Act ("CWA"), 42 U.S.C.
4 § 1317(b) and (c), and found that it requires that pretreatment standards "prevent the
5 discharge of any pollutant ..., which pollutant interferes with such works." *Id.* at 633.
6 The Court found that "Section 307(c) explains that such standards must be promulgated
7 'to insure that any source introducing pollutants into a [POTW] ... will not cause a
8 violation of the effluent limitations of such treatment works.'" *Id.* Second, the Court
9 looked at the Congressional intent of the CWA:

10 Congress made plain its intent that '[i]n no event is it intended that
11 pretreatment facilities be required for compatible wastes as a substitute for
12 adequate municipal waste treatment works.' [Citations omitted] **If the
13 inhibition or disruption is caused not by the industrial user's
14 discharge but by a mistake or malfunction at the POTW, the
15 industrial user will be punished for failing to substitute its own
16 pretreatment for the POTW's impaired treatment. We do not think
17 that Congress intended such liability.**

16 *Id.* at 640-41 (emphasis added). Therefore, the Court found that "an indirect discharge
17 cannot be liable under the prohibited discharge standard unless it is a cause of the
18 POTW's permit violation or sludge problem." *Id.* at 641.

19 In response to the NAMF decision, EPA formed a task force made up of
20 regulated industries, State regulatory agencies, POTWs, environmental interest groups
21 and EPA's Regional offices. General Pretreatment Regulations for Existing and New
22 Sources, 50 FR 25526-01 (June 19, 1985) ("Proposed Rule"). The task force
23 recommended the definition be "written to clearly establish the required causation." *Id.*
24 Therefore, in the Proposed Rule, EPA stated that a "causal link between the discharge of
25 one or more industrial users and the interference at the POTW" must be established to
26

27 ¹ In *Arkansas Poultry Fed'n v. U.S.E.P.A.*, 852 F.2d 324, 327 (8th Cir. 1988) the Court did not separate
28 its analysis of "pass-through" and "interference." Accordingly, the analysis in NAMF can be applied to each of
these allegations in the Complaint.

1 find an industrial user liable for an interference violation. *Id.* EPA stated that:

2 [B]y requiring that the industrial user 'cause' the POTW's noncompliance,
3 EPA is assuring that an industrial user would not be held liable where a
4 malfunction or improper operation by the POTW, rather than an industrial
5 user's discharge, causes the POTW's noncompliance. EPA intends that its
6 definition of interference be interpreted and implemented consistent with
7 the congressional intent that pretreatment technology not be required as a
8 substitute for adequate operation and maintenance of the POTW. ... the
relevant facts must be analyzed carefully in any case of POTW
noncompliance to determine the precise cause or causes of the
noncompliance.

9 *Id.* (emphasis added).

10 In the Final Rule EPA stated that if "a malfunction or improper operation by the
11 POTW, rather than an industrial user's discharge, causes the POTW's noncompliance
12 with its NPDES permit or sludge requirements, interference and/or pass through are not
13 occurring." General Pretreatment Regulations for Existing and New Sources, 52 FR
14 1586-01 (January 14, 1987) ("Final Rule"). Similarly, EPA stated that "an industrial
15 user would not be considered to have violated the general prohibition against pass
16 through and interference when the POTW's inability to comply with effluent limitations
17 based on secondary treatment is due to its failure to upgrade its treatment facilities from
18 primary treatment." *Id.* Finally, EPA made clear that, "[t]oday's final rule establishes
19 liability only upon cause and therefore is consistent with the NAMF decision." *Id.*

20 "Thus, an industrial user's liability for violating the general prohibitions will
21 depend on whether its discharge is a cause of the POTW's noncompliance rather than on
22 violating a specific list of prohibited acts. This allows liability to be determined on an
23 assessment of the facts in each case. (**This factual assessment would be similar to
24 that commonly used in tort litigation.**)" *Id.* (emphasis added).

25 The United States Supreme Court determined the standard for tort-based
26 causation in the context of federal legislation in its recent decision captioned *University
27 of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517 (2013). "Causation in
28

1 fact—*i.e.*, proof that the defendant's conduct did in fact cause the plaintiff's injury—is a
2 standard requirement of any tort claim." *Id.* at 2524. "In the usual course, this standard
3 requires the plaintiff to show 'that the harm would not have occurred' in the absence
4 of—that is, but for—the defendant's conduct." *Id.* at 2525 (citation omitted). "It is thus
5 textbook tort law that an action 'is not regarded as a cause of an event if the particular
6 event would have occurred without it.'" *Id.* (citation omitted). The Supreme Court then
7 observed that in the context of federal legislation that requires a standard of causation,
8 "these are the default rules [Congress]... is presumed to have incorporated, absent an
9 indication to the contrary in the statute itself." *Id.* In the present context, the tort
10 standard of causation has been specifically incorporated by the EPA in the Final Rule.

11 Therefore, in the context of the present Complaint, the Regional Board must
12 prove that the Brawley POTW would not have violated the limits of its NPDES permit
13 "but for" the discharges from National Beef. The evidence in this case makes this
14 showing impossible. Initially, the Brawley POTW was in violation of its NPDES
15 permit limitations before the beef plant was even constructed. (*See* Testimony of Jim
16 Stalh, filed herewith). This fact alone belies any conclusion that the conduct of National
17 Beef was the cause of the NPDES violations. Further, it is undisputed on the record of
18 this case that the Brawley POTW was designed and operated in such a way that made it
19 impossible for the Brawley POTW to effectively treat any ammonia. (*See* Testimony of
20 Jim Stalh, filed herewith and Memorandum of Jose Angel, Exhibit 45 to the evidence
21 submission of the Prosecution Team). Indeed, the Regional Board has previously
22 admitted in Administrative Civil Liability Complaint R7-2013-0028 issued to the City
23 of Brawley as the Owner/Operator of the Brawley POTW that the Brawley POTW
24 could not comply with the NPDES permit limits without any contribution from National
25 Beef:

26
27 18. As shown in Finding Nos. 8 through 15, cited above, since 1999
28 the Discharger [City of Brawley] has struggled to comply with its

1 previous NPDES permit limits for chronic and acute toxicity, Biochemical
2 Oxygen Demand (BOD), Total Suspended Solids (TSS), and bacteria
3 limits, and particularly with its current NPDES permit limits for ammonia.
4 Based on the Discharger's history of non-compliance with effluent
5 limitations and actual and potential harm to water quality, Regional Board
6 staff reasonably concluded that *the Discharger's WWTPs did not have*
7 *the necessary capacity to properly treat existing ammonia loads from*
8 *domestic sewer users, let alone increased ammonia loads from new*
9 *industrial users, including National Beef Company*, even with the
10 upgrades to flow and treatment capacity the Discharger completed in
11 response to TSO 99-054 and CAO R7-2004-0079.

8 Prosecution Team Evidence Submission, Exhibit 5, at NBC_ACLC_PT-001883-84
9 (emphasis added). This is a judicial admission that is binding on the Regional Board in
10 the present proceeding. *See, Lopez-Reyes v. Immigration and Naturalization Service,*
11 *694 F.2d 332 (5th Cir. 1982); see also, Bonnicksen v. U.S. Dept. of the Army, 969 F.*
12 *Supp. 614 (D. Ore. 1997).*

14 Further, the Complaint and the Evidentiary Submission from the Prosecution
15 Team of the Regional Board is completely devoid of any attempt to correlate any
16 discharge from the National Beef plant with any of the NPDES permit violations at
17 issue in the Complaint. Instead, the Complaint simply charges National Beef with pass
18 through and interference for each and every violation of the Brawley POTW NPDES
19 permit without any ability to tie such charge with any discharge from the National Beef
20 plant. This strict liability analysis is contrary to the applicable law stated above and is
21 wholly inadequate to state any claim for liability against National Beef much less prove
22 that National Beef caused any of the NPDES permit violations.

25 Finally, it was only when the Brawley POTW redesigned its WWTP and
26 implemented the upgrades that the NPDES permit violation ceased. The conduct of
27

1 National Beef had no impact on the ability of the Brawley POTW to comply with its
2 NPDES permit limits. Indeed, National Beef's conduct remained unchanged both
3 before and after the Brawley POTW initiated the upgrades to its system. The cause of
4 the NPDES violations was always the Brawley POTW itself.
5

6 In light of the indisputable record evidence that the Brawley POTW was not
7 capable of complying with its NPDES permit limits even if National Beef had never
8 discharged any waste water to the plant, it is impossible for the Prosecution Team to
9 meet its burden of proof on causation in the present proceeding. The violations that are
10 the subject of the Complaint were not "caused" by National Beef and, therefore,
11 National Beef cannot be liable under any theory of pass through or interference.
12
13
14

15 Dated: September 18, 2014

16 **STINSON LEONARD STREET LLP**

17 By: 
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28 **National Beef California, LP**

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

NATIONAL BEEF CALIFORNIA,
LP'S MEMORANDUM OF LAW IN
SUPPORT OF ITS AFFIRMATIVE
DEFENSE UNDER 40 C.F.R. 403.5

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Attorneys for Discharger:

National Beef California, LP

1 National Beef California, LP ("National Beef") submits the following memorandum of
2 law supporting National Beef's affirmative defense under 40 C.F.R. section 403.5 and
3 states as follows:

4 **INTRODUCTION**

5 In the Administrative Civil Liability Complaint R7-2014-0041 (the "Complaint")
6 issued by the California Regional Water Quality Board for the Colorado River Basin
7 Region it is alleged National Beef violated the Clean Water Act National Pretreatment
8 Standards by causing Pass Through and Interference with the City of Brawley's Publicly
9 Owned Treatment Works ("POTW"). The Complaint alleges that National Beef has
10 violated the federal National Pretreatment Standards of 40 CFR Section 403.5, which
11 prohibit an industrial user from introducing into a POTW any pollutants which cause
12 "Pass Through" or "Interfere" with the POTW regardless of whether the Industrial User
13 is subject to other National Pretreatment Standards or any national, State, or local
14 pretreatment requirements. The Complaint does not specifically identify any National
15 Beef discharge alleged to cause Pass Through or Interference. The Complaint (¶¶ 37-
16 41) identifies City of Brawley Waste Discharge Requirement violations spanning from
17 February 7, 2007 through May 30, 2012, and summarily concludes that National Beef
18 must have caused each and every one of the City of Brawley violations without any
19 discussion or consideration of National Beef's performance under the discharge
20 limitations set forth for its operations by the City of Brawley.

21 Pursuant to 40 C.F.R. 403.5(a)(2), if National Beef did not know or have reason
22 to know that its discharge, alone or in conjunction with the discharges of others would
23 cause Pass Through or Interference and National Beef was in compliance with local
24 limits designed to prevent Pass Through and/or Interference it is entitled to an
25 affirmative defense to all allegations in the Complaint as a matter of law. The record in
26 this proceeding conclusively establishes that National Beef is entitled to the benefit of
27 this defense for a vast majority of the time period at issue in the Complaint.
28

1 **STATEMENT OF LAW**

2 The affirmative defense set forth at 40 C.F.R. 403.5(a)(2) provides:

3 (2) *Affirmative Defenses*. A User shall have an affirmative defense in any action
4 brought against it alleging a violation of the general prohibitions established in
5 paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3),
6 (b)(4), (b)(5), (b)(6), and (b)(7) of this section where the User can demonstrate
7 that:

8 (i) It did not know or have reason to know that its Discharge, alone or in
9 conjunction with a discharge or discharges from other sources, would
10 cause Pass Through or Interference; and

11 (ii)(A) A local limit designed to prevent Pass Through and/or Interference,
12 as the case may be, was developed in accordance with paragraph (c) of
13 this section for each pollutant in the User's Discharge that caused Pass
14 Through or Interference, and the User was in compliance with each such
15 local limit directly prior to and during the Pass Through or Interference; or
16 (B) If a local limit designed to prevent Pass Through and/or Interference,
17 as the case may be, has not been developed in accordance with paragraph
18 (c) of this section for the pollutant(s) that caused the Pass Through or
19 Interference, the User's Discharge directly prior to and during the Pass
20 Through or Interference did not change substantially in nature or
21 constituents from the User's prior discharge activity when the POTW was
22 regularly in compliance with the POTW's NPDES permit requirements
23 and, in the case of Interference, applicable requirements for sewage sludge
24 use or disposal.

25 Specifically, National Beef asserts the defense in section 403.5(a)(2)(i) and (ii)(A).

26 **ANALYSIS**

27 **1. National Beef Did Not Know or Have Reason to Know that Its Discharges
28 Would Cause Pass Through or Interference.**

The first element of the affirmative defense requires the discharger to
demonstrate that it did not know or have reason to know that its discharges, alone or in
conjunction with discharges of other industries, businesses, and residents, would cause
Pass Through or Interference. National Beef demonstrates this through:

- 1) A written statement from the City that ammonia discharges of 30 mg/l or less could be adequately handled by the City POTW;
- 2) The City's application of local limits to the National Beef discharges which were specifically derived to prevent Pass Through or Interference;
- 3) 162 Notices of Violation issued by the City to National Beef to enforce local limits for a total of \$723,000 in administrative fines, all paid by National Beef, and a total of \$2,355,384 in surcharges to implement local limits for discharges of the pollutants at issue in the Complaint in which there were no allegations of Pass Through or Interference;
- 4) Ongoing and consistent communication with the City regarding wastewater discharges during which the City at no time alleged or indicated Pass Through or Interference was occurring or was threatened as a result of National Beef's discharges; and
- 5) National Beef's \$13,552,000 million dollars spent on beef plant pretreatment system upgrades to comply with City local limits.

Affirmative Confirmation of the 30 mg/l Ammonia Limit by the City

By letter dated February 2, 2005 the City stated that the City treatment works could handle beef plant ammonia discharges up to 30 mg/l and maintain compliance with its NPDES permit requirements. See Defendant Exhibit 16. The City's Wastewater Pretreatment Ordinance, Chapter 22, Art. II (Defendant Exhibit 988) ("City Ordinance"), imposes the referenced 30 mg/l ammonia as a local limit at section 22.18. At no time relevant to the Complaint did the City revise this determination or inform National Beef that discharges at or under the local limit would cause Pass Through or Interference. In fact, when National Beef exceeded the local limit, the City did not allege Pass Through or Interference but instead imposed fines and surcharges. The City's affirmative statement that the "lower [ammonia] limit will ensure that the City's Wastewater Treatment Facility eliminate its toxicity issues and be able to successfully pass the required Bioassay Testing" makes it impossible for National Beef to know or have reason to know that ammonia discharges of 30 mg/l or less could or would cause Pass Through or Interference. See Defendant Exhibit 16.

1 \$13,552,000 in pretreatment system capital improvements (See Testimony of William
2 A. "Bud" Ludwig, Jr.) to meet local limits unless those local limits were valid and
3 applicable and unless implementation of those local limits constituted compliance with
4 its wastewater discharge obligations.

5 **2. National Beef Was in Compliance with Section 403.5 Local Limits.**

6 The second element of the applicable affirmative defense is that a local limit
7 designed to prevent Pass Through and/or Interference was developed in accordance with
8 section 403.5(c) for each pollutant that caused Pass Through or Interference and the
9 discharger was in compliance with each such local limit directly prior to and during the
10 alleged Pass Through or Interference. In the present case, the Wastewater Pretreatment
11 Ordinance, Chapter 22, Art. II limits for ammonia, BOD, and TSS were developed in
12 accordance with section 403.5(c) and National Beef discharges were in compliance with
13 those limits or implementing some of the \$13,552,000 in pretreatment system upgrades
14 for compliance at all times relevant to the allegations in the Board Complaint.

15 ***Wastewater Pretreatment Ordinance, Chapter 22, Art. II Local Limits Were***
16 ***Developed in Accordance with Section 403.5***

17 Wastewater Pretreatment Ordinance, Chapter 22, Art. II, Section 22.10, states:

18 This chapter sets forth uniform requirements for users of the publicly owned
19 treatment works for the city and enables the city to comply with all applicable
20 state and federal laws, including the Clean Water Act (33 United States Code
21 § 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal
22 Regulations Part 403). The objectives of this chapter are:

- 23 1. To prevent the introduction of pollutants into the publicly owned
24 treatment works that will interfere with its operation;
- 25 2. To prevent the introduction of pollutants into the publicly owned
26 treatment works that will pass through the publicly owned
27 treatment works, inadequately treated, into receiving waters, or
28 otherwise be incompatible with the publicly owned treatment
works;

* * *

1 Wastewater Pretreatment Ordinance, Chapter 22, Art. II is in fact, the EPA Model
2 Pretreatment Ordinance, June 1992, (Defendant Exhibit 984) with modifications only to
3 provide City Ordinance numbering and to make references to the City specific to the
4 City of Brawley. Wastewater Pretreatment Ordinance, Chapter 22, Art. II establishes
5 local limits for ammonia, BOD, and TSS. These local limits are "Pretreatment
6 Standards" for the purposes of section 307(d) of the federal Clean Water Act. Thus, any
7 National Beef reliance on the local limits is reliance on Pretreatment Standards under
8 the federal Clean Water Act, which the Regional Board purports to be enforcing in this
9 matter.

10 The National Pretreatment Standards at 40 C.F.R. Section 403.5(c) entitled
11 "When specific limits must be developed by POTW" state:

12 (1) Each POTW developing a POTW Pretreatment Program pursuant to section
13 403.8 shall develop and enforce specific limits to implement the prohibitions
14 listed in paragraphs (a)(1) and(b) of this section.

15 (403.5(a) prohibits Pass Through and Interference and (b) sets forth specific
16 prohibitions.) Wastewater Pretreatment Ordinance, Chapter 22, Art. II limits were
17 developed under section 403.8 in response to Board Waste Discharge Requirements
18 Order No. 00-087 (NPDES Permit No. CA0104523). (Defendant Exhibit 983) 40
19 C.F.R. Section 403.5(c)(1) does not require that such local limits be approved by the
20 Approval Authority (the Regional Board) in order to constitute specific limits under the
21 regulations. 40 C.F.R. section 403.5(d) states:

22 Local limits. Where specific prohibitions or limits on pollutants or pollutant
23 parameters are developed by a POTW in accordance with paragraph (c) above,
24 such limits shall be deemed Pretreatment Standards for the purposes of section
25 307(d) of the [Clean Water] Act.

26 The Regional Board now takes the position that the Wastewater Pretreatment
27 Ordinance, Chapter 22, Art. II local limits are not valid.¹ (Defendant Exhibit 709, pg.

28 ¹ Note that the City's local limits also were valid under the California
Government Code as limits to meet federal and state requirements. California

1 119-120) This comes 13 years after enactment of Wastewater Pretreatment Ordinance,
2 Chapter 22, Art. II and after 13 years of implementation of that ordinance, including as
3 to National Beef \$723,000 in fines for violation of the local limits (Defendant Exhibit
4 994), \$2,355,384 in surcharges for exceeding the local limits (Testimony of William A.
5 "Bud" Ludwig, Jr.), and \$13,552,000 in pretreatment system upgrades to meet the local
6 limits (Testimony of William A. "Bud" Ludwig, Jr.). This position is also inconsistent
7 with Section 403.5(c) and (d), which, on their face, require development and
8 enforcement of limits by POTWs.

9 Courts have long held that, "[u]nless otherwise defined, statutory terms are
10 generally interpreted in accordance with their ordinary meaning." *Perrin v. United*
11 *States*, 444 U.S. 37, 42 (1979); *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006).
12 This is also true of regulations, which are interpreted according to their plain language
13 unless they are ambiguous. *See Christensen v. Harris Cnty.*, 529 U.S. 576 (2000)
14 ("deference is warranted only when the language of the regulation is ambiguous"); *Pres.*
15 *of Los Olivos v. U.S. Dep't of Interior*, 635 F. Supp. 2d 1076, 1090 (C.D. Cal. 2008)
16 ("although courts will defer to an agency's construction of a regulation that is
17 ambiguous, deference is not required when the agency's interpretation is inconsistent
18 with the plain language of the regulation itself"); *Wards Cove Packing Corp. v. Nat'l*
19 *Marine Fisheries Serv.*, 307 F.3d 1214, 1219 (9th Cir. 2002) ("the plain meaning of a
20 regulation governs and deference to an agency's interpretation of its regulation is
21 warranted only when the regulation's language is ambiguous ..."). Here, the plain
22 meaning of 403.5(c) and (d) is inescapable. Ordinance 2001-07 local limits are
23 Pretreatment Standards under the Clean Water Act.

24 *National Beef was in Compliance or Engaged in Pretreatment System*
25 *Improvements to Achieve Compliance at all Times Relevant to Allegations of*

26 Government Code section 54739(a) authorizes municipalities to require pretreatment of
27 any industrial waste which the municipality determines is necessary in order to meet
28 standards established by the federal or California state government or which the
municipality determines is necessary to protect its treatment works or the proper and
efficient operation of treatment works.

1 *Pass Through or Interference*

2 The Board Complaint does not specify which days of National Beef discharge
3 are alleged to have caused Pass Through or Interference and thus, as set forth in
4 National Beef's second affirmative defense in its Answer to the Complaint, the
5 Complaint does not adequately establish a cause of action. The Board's allegations in
6 this regard are a mix and match of various pollutant parameters, monitored at various
7 intervals, with various analytical techniques. Given this, it is possible to establish this
8 element of the affirmative defense only by examining National Beef's good record of
9 compliance and careful attention and investment in its wastewater pretreatment system.
10 *See* 40 C.F.R. §403.5(a)(2)(ii)(A).

11 National Beef's compliance record for ammonia, TSS and BOD when combined
12 with National Beef's implementation of \$13,552,000 in pretreatment improvements for
13 compliance establish that National Beef was in compliance with Pretreatment Standards
14 under 307(d) of the federal Clean Water Act, i.e. the local limits. The testimony of
15 William A. "Bud" Ludwig, Jr. depicts the pretreatment system improvements that were
16 taking place both proactively and in response to ammonia levels in National Beef's
17 discharge.

18 Certainly at no time that National Beef was in compliance with the local limits
19 can there be a Pass Through or Interference by the terms of the plain meaning of the
20 affirmative defense in 40 C.F.R. §403.5(a)(2)(ii)(A). Thus, as a matter of law for each
21 time period at issue for each pollutant alleged to have caused Pass Through or
22 Interference in the Complaint, whenever National Beef is in compliance with local
23 limits National Beef cannot be liable for Pass Through or Interference. Yet, on a
24 blanket basis the Regional Board has blamed National Beef for every violation of the
25 City's NPDES permit during the time of National Beef's operation. As demonstrated in
26 the expert testimony of Mr. Stahl and Mr. Zaugg, National Beef was in compliance with
27 the local limits a majority of the time. The Regional Board is unable to tie any
28 discharge from National Beef to any violation of the City's NPDES permit. The

1 Regional Board alleges that National Beef is responsible for a mix and match of 375
2 alleged violations of the City's NPDES limits for various pollutants at various
3 measurement intervals. None of these are identified to a single National Beef discharge.
4 Moreover, the Complaint attempts to count ammonia NPDES violations five times over
5 and attribute 316 violations to National Beef counting City NPDES violations of
6 ammonia daily concentration, ammonia monthly concentration, daily mass loading,
7 monthly mass loading, Whole Effluent Toxicity acute, and Whole Effluent Toxicity
8 chronic violations, all for the same period of time. In short, the Complaint entirely fails
9 to allege a cause of action.

10 Finally, the Complaint alleges that National Beef is accountable under Pass
11 Through or Interference for a total of 375 City NPDES permit violations. By definition,
12 Pass Through or Interference liability is attributed to discharges TO a POTW, not
13 FROM a POTW. 40 C.F.R. § 403.3(k) and (p). Thus, a count of 375 Pass Through or
14 Interference allegations is not sustainable under the plain meaning of the definitions of
15 Pass Through or Interference.

16 National Beef's record establishes that it was in compliance with local limits and,
17 where excursions occurred, was in substantial compliance. In addition to this substantial
18 compliance, the beef plant has now ceased operations, making it absolutely clear that
19 any alleged wrongful behavior could not be reasonably expected to recur. *See Friends of*
20 *the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

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Dated: September 18, 2014

By: 

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

NATIONAL BEEF CALIFORNIA, LP'S
MEMORANDUM OF LAW REGARDING
CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION 338(I) AND THE
DOCTRINE OF LACHES

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Attorneys for Discharger:

National Beef California, LP

1 National Beef California, LP ("National Beef") submits the following memorandum of
2 law regarding California Code of Civil Procedure section 338(i) and the doctrine of laches and
3 states as follows:.

4 INTRODUCTION

5 In the Administrative Civil Liability Complaint R7-2014-0041 (the "Complaint") issued
6 by the California Regional Water Quality Board for the Colorado River Basin Region
7 ("Regional Board") it is alleged National Beef violated the Clean Water Act national
8 pretreatment standards by causing pass-through and interference with the City of Brawley's
9 Publicly Owned Treatment Facility ("POTW"). The Complaint alleges that the City of Brawley
10 violated its NPDES permit limits for Biochemical Oxygen Demand ("BOD"), ammonia and
11 Total Suspended Solids ("TSS"), and argues that because the City violated its limits, National
12 Beef must have caused pass-through and interference.

13 The Complaint assesses violations dating back as far as June, 2006. The claims in the
14 Complaint are inconsistent with the applicable law as they seek penalties for alleged violations
15 that occurred more than three years before the Complaint was issued.

16 In California, the statute of limitations for civil actions brought to enforce the Porter
17 Cologne Water Quality Control Act is three years. While statutes of limitations are generally
18 inapplicable to administrative proceedings, they do provide a measure of how far back it is
19 appropriate for an agency to reach under the doctrine of laches. A claim will be barred by
20 laches if the claimant has unreasonably delayed or been negligent in asserting the claim, and
21 when that delay or negligence has prejudiced the party against whom relief is sought.

22 Here, the Regional Board has waited almost a decade before bringing claims against
23 National Beef. In that time, witness memories have faded, treatment facilities have been
24 changed, and key evidence that could exonerate National Beef has been lost. National Beef has
25 therefore been prejudiced by the Regional Board's failure to bring its claims in a timely
26 manner. As a result, the Complaint must be dismissed and National Beef discharged from any
27 claim of liability thereunder.

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STATEMENT OF LAW

California Code of Civil Procedure section 338 states in pertinent part:

Within three years . . .

(i) An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under their jurisdiction.

Cal. Code Civ. Proc. § 338

California Courts have held that generally the statutes of limitations in the Code of Civil Procedure do not apply to administrative proceedings, *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48 though no court has expressly held that section 338(i) does not apply to administrative fines sought by a Regional Water Quality Control Board or the State Water Resources Control Board.

Related to the concept of statute of limitations is the principle of laches. Laches is a court-made, equitable doctrine based on the “principle that those who neglect their rights may be barred from obtaining relief in equity.” *Feduniak v. California Coastal Com'n* (2007) 148 Cal.App.4th 1346, 1381. It is a defense by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting a claim, when that delay or negligence has prejudiced the party against whom relief is sought. *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 68.

The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay. *Id.* “[L]aches is not available where it would nullify an important policy adopted for the benefit of the public.” *Feduniak v. California Coastal Com'n* (2007) 148 Cal.App.4th 1346, 1381. Notably, the statute of limitations in the Code of Civil Procedures will act as the benchmark for how far back a claim may go where laches is applicable. *Brown v. State Pers. Bd.* (1985) 166

1 Cal. App. 3d 1151, 1159-60.

2 **ANALYSIS**

3 The Regional Board's claims in the Complaint are barred by California Code of Civil
4 Procedure section 338(i) as applicable through the doctrine of laches. As described above, the
5 defense of laches is available where the claimant has unreasonably delayed or been negligent in
6 asserting a claim, and the delay or negligence has prejudiced the defendant.

7 Here, the Regional Board is seeking to fine National Beef for alleged violations that
8 took place between June, 2006 and July 2011. The full range of the claims would be time
9 barred under a plain application of California Code of Civil Procedure section 338(i).
10 Exceeding the statute of limitations is on its face evidence of delay on the part of the Regional
11 Board. *Robert F. Kennedy Medical Ctr. v. Dep't of Health Servs.* (1998) 61 Cal. App. 4th
12 1357, 1362 [citing *Brown v. State Pers. Bd.* (1985) 166 Cal. App. 3d 1151, 1159-60].

13 The Regional Board has no justifiable reason for the delay. The City of Brawley has
14 been reporting National Beef's discharges into the Brawley POTW, and the discharges from the
15 POTW into the New River on at least an annual basis since the National Beef facility opened.
16 The Regional Board has had ample notice of the conditions that it alleges constitute violations
17 of Federal Regulations for the entire period of alleged violation. Moreover, the Regional Board
18 has had ample time to pursue a claim against National Beef. There is no justifiable reason for
19 the Regional Board to wait almost a decade before pursuing a claim.

20 The delay on the part of the Regional Board has in fact caused prejudice to National
21 Beef. The National Beef facility in the City of Brawley was constructed in 2001 with the
22 approval of the City and the Regional Board. Documents in the record demonstrate that the
23 Regional Board and the project developer were having conversations about the treatment
24 facilities necessary at the project site and whether they would be sufficient to ensure that the
25 Brawley POTW maintained compliance. (*See Defendant Exhibit 433, 2002 Letter from*
26 *Brawley Beef to Rokke*)

27 With the passage of time, witness memories have faded, and the Regional Board
28

1 employees who apparently handled the matter in 2002 do not recall any meetings,
2 conversations or correspondence related to construction or approval of the National Beef
3 facility. (See Defendant Exhibit 707, Deposition of Rokke, Page 65-71). This loss of
4 information is prejudicial to National Beef. The Regional Board's role in approving the
5 National Beef facility is highly relevant to whether National Beef discharges from the facility
6 actually caused interference or pass through at the Brawley POTW. Because the Regional
7 Board waited so long to bring its claim, that information is now gone.

8 Other information has been lost as well. Central to the Regional Board's claims is the
9 concept of "build up" within the Brawley POTW. (See Defendant Exhibit 709, Deposition of
10 Jose Angel, Page 174). According to the Regional Board, the violations caused by National
11 Beef occurred in some cases many months after National Beef discharged high levels of
12 pollutants to the Brawley POTW because the pollutants were building up within the settling
13 ponds at the POTW. The City of Brawley reconfigured its POTW in 2011. It now uses a
14 Biolac system that does not rely on settling ponds or aeration lagoons. As a result, there is no
15 way to test to see whether there is "build up" within the ponds or whether discharges from
16 National Beef caused such "build up."

17 Information regarding "build up" is critical to disproving the Regional Board's claims
18 in the instant case. However because the Regional Board waited so long to bring its claims,
19 National Beef has no ability to develop that information. There are no alternative methods for
20 testing the Regional Board's theory, and no readily available information from the POTW that
21 could substitute. The information and the opportunity to gather it is simply gone.

22 The loss of the opportunity to gather potentially exculpatory information because of the
23 claimant's delay in bringing the claim is the gravamen of a laches claim. *Brown v. State Pers.*
24 *Bd.* (1985) 166 Cal. App. 3d 1151, 1161 ["Statutes of limitation, like the equitable doctrine of
25 laches, in their conclusive effects are designed to promote justice by preventing surprises
26 through the revival of claims that have been allowed to slumber until evidence has been lost,
27 memories have faded, and witnesses have disappeared"].

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

NATIONAL BEEF CALIFORNIA,
LP'S MEMORANDUM OF LAW
REGARDING DUAL
ENFORCEMENT AND DOUBLE
FINES IN VIOLATION OF
STATUTORY AND COMMON LAW

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~~CORE/0808452.0006/102827070.3~~

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1 National Beef California, LP ("National Beef") submits the following
2 memorandum of law regarding the Regional Board's impermissible dual enforcement
3 and double fines against National Beef where the City of Brawley has previously
4 enforced valid Pretreatment Standards of Section 307(a) of the federal Clean Water Act.

5 INTRODUCTION

6 At all times relevant to Administrative Civil Liability Complaint R7-2014-0041
7 ("Complaint"), the City of Brawley had a valid Wastewater Pretreatment Ordinance to
8 implement Federal and California law prohibitions against Pass Through and
9 Interference and has enforced the ordinance against National Beef. The Regional Board
10 is barred from enforcing these same requirements against National Beef to prevent
11 duplicate enforcement of 40 C.F.R. Part 403 and pursuant to the doctrine of res judicata.

12 The Complaint impermissibly assesses administrative civil liability penalties for
13 alleged violations of prohibitions against Pass Through and Interference that already
14 have been enforced by the City of Brawley under Wastewater Pretreatment Ordinance,
15 Chapter 22, Art. II. (Defendant Exhibit 983) The Regional Board's action duplicates
16 administrative penalty actions under which the City fined National Beef \$723,000 and
17 seeks \$3,750,000 for the same alleged conduct. This results in windfalls to the City and
18 the Regional Board and impermissibly subjects National Beef to dual enforcement and
19 double fines.

20 ANALYSIS

21 1. The City has enforced the Federal National Pretreatment Regulations 22 against National Beef pursuant to Wastewater Pretreatment Ordinance, 23 Chapter 22, Art. II.

24 Wastewater Pretreatment Ordinance, Chapter 22, Art. II:

25 [S]ets forth uniform requirements for users of the Publicly Owned Treatment
26 Works for the City of Brawley and enables the City to comply with all applicable
27 State and Federal laws, including the Clean Water Act (33 United States Code §
28 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal
Regulations Part 403).

1 Wastewater Pretreatment Ordinance, Chapter 22, Art. II. The State of California
2 pretreatment standards are incorporated into Wastewater Pretreatment Ordinance,
3 Chapter 22, Art. II. California is delegated authority to implement the federal National
4 Pretreatment Standards of 40 C.F.R. Part 403. (Defendant Exhibit 708). Thus,
5 references to the federal National Pretreatment Standards of 40 C.F.R. Part 403 are
6 included within the California Pretreatment Standards.

7 The Complaint alleges that National Beef has violated federal National
8 Pretreatment Regulations which state:

9 A User may not introduce into a POTW any pollutant(s) which cause Pass
10 Through or Interference.

11 40 C.F.R. § 403.5.

12 Wastewater Pretreatment Ordinance, Chapter 22, Art. II states:

13 No user shall introduce or cause to be introduces into the POTW any pollutant or
14 wastewater which causes pass through or interference.

15 Ordinance 2001-07, § 22.15(a). The prohibitions of the federal National Pretreatment
16 Standards that the Regional Board seeks to enforce are identical to the Wastewater
17 Pretreatment Ordinance, Chapter 22, Art. II prohibitions. Likewise, the definitions of
18 "Pass Through" and "Interference" in the Wastewater Pretreatment Ordinance, Chapter
19 22, Art. II and the 40 C.F.R. Part 403 regulations are identical. *See and compare*
20 Wastewater Pretreatment Ordinance, Chapter 22, Art. II § 22.13with 40 CFR 403.3(p)
21 (Pass Through) and Wastewater Pretreatment Ordinance, Chapter 22, Art. II §
22 22.13with 40 CFR 403.3(k) (Interference).

23 Wastewater Pretreatment Ordinance, Chapter 22, Art. II was adopted pursuant to
24 Section 403.5(c)(1) of the federal General Pretreatment Standards. Section 403.5(c)(1)
25 states that each "POTW developing a POTW Pretreatment Program pursuant to §403.8
26 shall develop and enforce specific limits to implement" the pass through and
27 interference prohibitions. 40 CFR 403.5(c)(1). Wastewater Pretreatment Ordinance,
28

1 Chapter 22, Art. II was developed under section 403.8 pursuant to Regional Board
2 Waste Discharge Requirements Order No. 00-087 (NPDES Permit No.
3 CA0104523)(Defendant Exhibit 983). Section 403.5(c)(1) does not require that general
4 or specific prohibitions be approved by the Approval Authority (here, the Regional
5 Board) in order to constitute limitations under the federal National Pretreatment
6 Standards. *See* 40 C.F.R. § 403.5(c) and (d).

7 In addition to the explicit language of Wastewater Pretreatment Ordinance,
8 Chapter 22, Art. II referencing the City's implementation of the federal Clean Water
9 Act, the City routinely issues Notices of Violation ("NOVs") in which the City
10 specifically states that it is enforcing the Clean Water Act. Each of the 163 NOVs
11 issued by the City to National Beef states that it is issued "[p]ursuant to the Clean Water
12 Act and the City of Brawley Pretreatment Ordinance regulating the City's industrial
13 discharge ..." (Defendant Exhibit 994) Based on the foregoing, the City is enforcing
14 the federal National Pretreatment Standards of 40 C.F.R. Part 403 prohibiting Pass
15 Through and Interference through local limits. The Regional Board may not assess
16 penalties for violations of the federal National Pretreatment Standards that the City
17 already has enforced against National Beef.

18
19 **2. The doctrine of res judicata bars the Regional Board from assessing**
20 **penalties under the same laws (Clean Water Act and California Water**
21 **Code) for the same conduct that the City of Brawley has already enforced**
22 **against National Beef.**

23 As discussed above, the City actively has enforced against National Beef local
24 limits that implement the Pass Through or Interference prohibitions of the federal
25 National Pretreatment Standards of the federal Clean Water Act and California Water
26 Code through 163 NOVs. The Regional Board is barred by the doctrine of res judicata
27 from asserting claims against National Beef for Pass Through or Interference.
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1 not required for the resolution to bind a party in privity. *See Hollywood Circle, Inc. v.*
2 *Dep't of Alcoholic Beverage Control*, 55 Cal. 2d 728, 731-32, 361 P.2d 712, 714
3 (1961)("The doctrine of res judicata '* * * is based upon the sound * * * policy of
4 limiting litigation by preventing a party who * * * had one fair trial on an issue from
5 again drawing it into controversy.' This policy can be as important to orderly
6 administrative procedure as to orderly court procedure.") (internal citations omitted).
7 Therefore, the Regional Board is precluded from enforcing the pass-through and
8 interference allegations, as they have already been resolved by the City of Brawley.

9 **3. The Regional Board cannot assess penalties for allegations that have already**
10 **been resolved by the City.**

11 The Complaint issued by the Regional Board impermissibly assesses administrative
12 civil liability penalties for alleged violations that already were enforced by the City of
13 Brawley. The City of Brawley issued 163 NOVs to National Beef for violating local
14 limits designed to prevent Pass Through or Interference during the time National Beef
15 operated the beef plant. National Beef paid \$2,000 to \$5,000 per violation in response to
16 the NOVs for a total of \$723,000. The Regional Board cannot now assess civil liability
17 for alleged Pass Through or Interference.

18 As discussed above, the City's Ordinance was adopted pursuant to Section 403.5(c),
19 and the local limits that the City has enforced against National Beef were designed to
20 implement the prohibition against Pass Through or Interference and are Clean Water
21 Act Pretreatment Standards. The NOVs further support that the City was enforcing
22 Clean Water Act limits, as each NOV states that it is issued "[p]ursuant to the Clean
23 Water Act and the City of Brawley Pretreatment Ordinance regulating the City's
24 industrial discharge ..."

25 In *Sierra Club v. City of Colorado Springs*, a citizen group filed suit for NPDES
26 violations by a municipal sewer operation. 2009 U.S. Dist. LEXIS 73922 (D.Colo.
27 2009). The District of Colorado took judicial notice of "the important fact that all but

1 seven of the twenty-three events creating potential penalty liability have been
2 previously the subject of CDPHE orders," one of which resulted in a civil penalty of
3 \$130,300 and others of lesser value. *Id.* at **35–37. The Court then addressed the
4 factors for penalty assessment and particularly noted that "[t]he final factor of any
5 matter required by considerations of justice include the reality of the penalties already
6 imposed and paid ... no authority has been submitted to suggest the CWA contemplates
7 a federal court duplicating a penalty already assessed by a state agency. Indeed, the
8 Tenth Circuit has concluded that the governing principle behind [CWA] § 1319(g) is to
9 avoid duplicative monetary penalties for the same violation." *Id.* at **41–42 (citing
10 *Paper, Allied-Indust. Chem. And Energy Workers Int'l. Union v. Cont'l Carbon*, 428
11 F.3d 1285, 1300 (10th Cir. 2005) (internal quotations omitted). The court also
12 considered the "extensive efforts" defendant undertook to comply with its permits, in
13 that "[m]illions of dollars have been spent, including \$ 10 million on the project to
14 protect downstream communities by means of a diversion structure. These
15 considerations weigh heavily additional penalties beyond those already imposed." *Id.* at
16 *42. Thus, the court held that "[n]o further penalty will be imposed as to any event
17 previously made subject to a civil penalty by the CDPHE." *Id.* at *44.

18 The *City of Colorado Springs* analysis is applicable to the present case because
19 California Water Code Section 13326 states, "No person shall be subject to both civil
20 liability imposed under this article and civil liability imposed by the superior court
21 under Articles 5 (commencing with Section 13350) and 6 (commencing with Section
22 13360) for the same act or failure to act." Although Section 13326 does not speak to the
23 exact circumstances here, the concept that liability cannot be assessed in both the civil
24 and administrative contexts shows the intent of the legislature not to allow double
25 penalties for the same act.

26 The Regional Board cannot enforce against National Beef for alleged Pass Through
27 or Interference violations where the City already adequately has enforced local limits to
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1 prevent Pass Through or Interference.

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5 Dated: September 18, 2014

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National Beef California, LP

1
2 **STATE OF CALIFORNIA**
3 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
4 **COLORADO RIVER BASIN REGION**
5

6 In the matter of:

7 ADMINISTRATIVE CIVIL LIABILITY
8 COMPLAINT R7-2014-0041 ISSUED
9 TO NATIONAL BEEF CALIFORNIA,
10 LP, OWNER/OPERATOR
11 WASTEWATER TREATMENT
12 FACILITY

13 CITY OF BRAWLEY-IMPERIAL
14 COUNTY

MEMORANDUM OF LAW
CHALLENGING REGIONAL BOARD'S
ASSESSMENT OF PENALTIES

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1 National Beef California, LP ("National Beef") submits the following memorandum of
2 law challenging the California Regional Water Quality Board for the Colorado River Basin
3 Region ("Regional Board") assessment of penalties against National Beef provided in the
4 Administrative Civil Liability Complaint R7-2014-0041 ("Complaint") and Attachments K
5 through M thereto:

6 INTRODUCTION

7 The Complaint proposes an administrative civil liability penalty of \$3,750,000 on
8 National Beef. The Regional Board provides its penalty calculation methodology in Attachments
9 K and L to the Complaint, and its assessment of economic benefit in Attachment M to the
10 Complaint. The Regional Board's penalty calculation is contrary to Sections 13385(c)(1) and
11 13385(e) of the California Water Code and the State Water Control Board's Water Quality
12 Enforcement Policy, effective May 20, 2010. The Regional Board failed to take into account the
13 factors required to be evaluated pursuant to Section 13385 of the California Water Code. Instead,
14 the Regional Board made a blanket assessment of the maximum penalty possible, and penalized
15 National Beef for identical violations as many as five times over. To the extent the Regional
16 Board did evaluate the factors required under Section 13385(e) in its Attachment K analysis, the
17 Regional Board made erroneous determinations of fact and law.

19 STATEMENT OF LAW

20 The California Water Code identifies administrative civil liability penalties that may be
21 sought by a Regional Board:

22 (c) Civil liability may be imposed administratively by the state board or a regional board
23 pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not
24 to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each
25 day in which the violation occurs.

26 Cal. Water Code, Section 13385(c)(1). The Water Code similarly describes factors that must be
27 considered by California Water Board in formulating its penalty assessment:

28 (e) In determining the amount of any liability imposed under this section, the regional
board, the state board, or the superior court, as the case may be, shall take into account

1 the nature, circumstances, extent, and gravity of the violation or violations, whether the
2 discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge,
3 and, with respect to the violator, the ability to pay, the effect on its ability to continue its
4 business, any voluntary cleanup efforts undertaken, any prior history of violations, the
5 degree of culpability, economic benefit or savings, if any, resulting from the violation,
6 and other matters that justice may require. At a minimum, liability shall be assessed at a
7 level that recovers the economic benefits, if any, derived from the acts that constitute the
8 violation.

9 Cal. Water Code, Section 13385(e). In addition to the California Water Code, the State Water
10 Resources Control Board Water Quality Enforcement Policy, May 20, 2010 ("Enforcement
11 Policy") was promulgated to assist the California Water Boards in "protect[ing] and enhance[ing]
12 the quality of the waters of the State by defining an enforcement process that addresses water
13 quality problems in the most efficient, effective, and consistent manner." Enforcement Policy, at
14 1. The Enforcement Policy states that it is intended to "provide guidance that will enable Water
15 Board staff to expend its limited resources in ways that openly address the greatest needs, deter
16 harmful conduct, protect the public, and achieve maximum water quality benefits." Enforcement
17 Policy, at 1. As such, Regional Board decisions are to be consistent with the Enforcement Policy.

18 ANALYSIS

19 The Regional Board's proposed administrative civil liability penalty does not comport
20 with the California Water Code or the Enforcement Policy.

21 1. California Water Code

22 Section 13385(c) allows a statutory maximum penalty of \$10,000 for each date in which
23 a violation occurs. This is not a required penalty, but one the maximum amount that can be
24 assessed after evaluation of the factors in Section 13385(e) per the Enforcement Policy. Case law
25 has confirmed that in circumstances where the discharger introduces evidence in mitigation of
26 damages, lesser penalties may be assessed. *See California v. City and County of San Francisco*,
27 94 Cal. App.3d 522, 531-32 (1979). As described in detail below, the Regional Board clearly did
28 not take the Section 13385(e) factors into account and, where the factors were considered, used
incorrect facts and legal standards in its analysis.

1 **2. California State Water Resources Board Water Quality Enforcement Policy**

2 **a) Introduction**

3 The Enforcement Policy states that a "good enforcement program relies on well-
4 developed compliance monitoring systems designed to identify and correct violations, help
5 establish an enforcement presence, collect evidence needed to support enforcement actions
6 where there are identified violations, and help and target and rank enforcement priorities."
7 Enforcement Policy, at 1. The Enforcement Policy further states that "the most effective and
8 timely methods" should be used "to assure that the regulated community stays in compliance."
9 Enforcement Policy, at 1. This post-plant closing, purely punitive enforcement action does not
10 meet a single objective of the Enforcement Policy.¹

11 The Complaint discusses events as far back as 2001, five years before National Beef
12 purchased the beef plant, and discusses National Beef discharges as far back as 2007. All
13 information regarding City discharges and discharges from the beef plant were public during that
14 entire period. The Regional Board was required to regulate the discharges, yet the Regional
15 Board did nothing for 13 years – 8 of those years as to National Beef. The Regional Board's
16 tardy enforcement in 2014 provided no opportunity for environmental benefit or enhanced
17 protection of water quality. Thus, the Complaint and the penalties it seeks are wholly
18 inconsistent with the California Water Code and the Enforcement Policy.

19 **b) Fair, Firm and Consistent Enforcement**

20 The Enforcement Policy strives "to be fair, firm, and consistent in taking enforcement
21 actions throughout the State, while recognizing the unique facts of each case." Enforcement
22 Policy, at 2. This includes issuing "consistent" orders, using "consistent treatment for violations
23 that are similar in nature and have similar water quality impacts." The Regional Board failed to
24 provide fair and consistent enforcement in this case.

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¹ Section 13385 does not provide for "punitive damages." *See California v. City and County of San Francisco*, 94 Cal. App.3d
27 522, 527 (1979)(Section 13385 "promotes a compensatory purpose and ... moneys awarded pursuant to it are not punitive
28 damages ...").

1 This is the largest penalty ever assessed by the Regional Board, which, by definition, is
2 not consistent with prior actions. In addition, the proposed penalty is nearly four times higher
3 than the penalty assessed to the City of Brawley – the POTW that actually discharges its effluent
4 to waters of the state. National Beef is being penalized with the maximum statutory penalty
5 while the actual discharger, which held itself out as being able to treat National Beef's discharge,
6 got a slap on the wrist with a fine that was almost 75 percent less than the penalty proposed to
7 National Beef. This illustrates that the Regional Board's assessment was wholly made without
8 regard for fairness or consistency.

9 Moreover, a review of all administrative civil penalty actions for water quality cases in
10 the Colorado River Basin Region available on the Region website shows that since mid-2006
11 only one other action sought a penalty of more than \$1,000,000 – the enforcement action against
12 the City of Brawley which was for \$1,700,000 and settled for \$1,000,000. The next largest civil
13 administrative liability penalty in a water quality case was \$199,000. Of the 44 administrative
14 liability penalty actions available for review:

- 15 • 1 assessed a penalty of \$1,000,000 (City of Brawley)
- 16 • 8 assessed a penalty greater than \$100,000 with \$199,000 being the highest
17 penalty assessed in that group
- 18 • The remaining 35 actions had penalties ranging from \$1,500 to \$79,828

19 No analysis of the Regional Board's penalty assessments since mid-2006 can result in a
20 conclusion that the \$3,750,000 penalty against National Beef is fair or consistent. This shocking
21 outlier penalty in and of itself demonstrates not only that the Regional Board is acting purely
22 punitively, but also demonstrates that the Regional Board is abusing its authority under the
23 California Water Code. Abuse of authority is a fact that Regional Board staff have brought to
24 the attention of legal counsel for the State Board. *See* Defendant Exhibit 572. This wholly
25 punitive, unfair, and inconsistent penalty assessment in and of itself constitutes grounds for
26 dismissal of the Complaint.

1 **c) Enforcement Priorities for Discretionary Enforcement Actions**

2 The Enforcement Policy requires ranking and prioritizing of violations, and provides
3 three classes of priority for violations. Enforcement Policy, at 4-6. It is not clear from the
4 Complaint or attachments thereto that the Regional Board evaluated and then assigned priority
5 and/or ranking for this action. National Beef objects to the Regional Board's failure to provide a
6 ranking in accordance with the Enforcement Policy. As this is by far the largest penalty ever
7 assessed by the Regional Board, National Beef assumes a Class I priority was determined. If the
8 Regional Board assessed this as a Class I priority, National Beef asserts that it engaged in no
9 conduct rising to the level of a Class I priority.

10 **d) Monetary Assessments in Administrative Civil Liability (ACL) Actions**

11 In Attachment K to the Complaint, the Regional Board proposes a penalty of \$3,750,000
12 after application of a 10-step process. As described below, the Regional Board misapplied the
13 factors, used inaccurate facts and relied on unfounded characterizations of the law.²

14 The Enforcement Policy states that assessments of administrative civil liability should:

- 15 • Be assessed in a fair and consistent manner;
- 16 • Fully eliminate any economic advantage obtained from non-compliance;
- 17 • Fully eliminate any unfair competitive advantage obtained from noncompliance;
- 18 • Bear a reasonable relationship to the gravity of the violation and the harm to
19 beneficial uses or regulatory program resulting from the violations;
- Deter the specific person(s) identified in the ACL from committing further
 violations; and

20 ² The Enforcement Policy states:

21 As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address
22 environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in
23 reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a
 penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain
 cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as
 an appropriate penalty for water quality violations, in the absence of any other mitigating evidence.

24 Enforcement Policy, at 9. This paragraph is misleading because it suggests that the statutory maximum penalty is required to be
25 assessed, when, in reality, there are instances when public policy mandates shifting the burden. *See California v. City and County*
26 *of San Francisco*, 94 Cal. App.3d 522, 531-32 (1979). Regardless, in this Memorandum, National Beef is providing factual and
27 legal information that supports and justifies imposition of a penalty lower than the statutory maximum. However, even if
28 National Beef did not provide this information, the facts of this case constitute an exceptional circumstance that justifies
 shifting the burden of proof to the Regional Board to justify its penalty assessment, as the Regional Board has made conclusory,
 inaccurate legal and factual statements in support of its penalty assessment.

- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

Enforcement Policy, at 10. The Regional Board failed to assess administrative civil liability against National Beef in a manner consistent with the Enforcement Policy objectives.

i) Step 1

Step one of the Enforcement Policy requires a calculation of potential for harm considering: the potential for harm to beneficial uses, the degree of toxicity of the discharge, and the discharge's susceptibility to cleanup or abatement. Enforcement Policy, at 12. The Regional Board scored National Beef as a 10 for potential for harm for discharge violations – the highest possible score. This score is inaccurate and is incorrectly based on the most severe score in each category.

(1) Harm or potential harm to beneficial uses

In determining National Beef's score for potential harm, the Regional Board found that National Beef has a "major" harm or potential harm to beneficial uses – the highest score. Attachment K to Compliant. "Major" is defined as a "high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions on beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health)." Enforcement Policy, at 12.

The Regional Board based this finding on the New River's presence on the 303(d) List of Impaired Waters. The Regional Board states that "the city of Brawley's Wastewater Treatment Plant (WWTP) has contributed to the ammonia and toxicity impairments directly, downstream from and in the immediate vicinity of, the Brawley WWTP discharge outfall." Attachment K, at 2. The Regional Board identifies National Beef as "the major controllable source of ammonia and toxicity into the Brawley WWTP." Attachment K, at 2. The Clean Water Action section 303(d) listing for the New River simply does not support such assertions. (See 2010 CWA

1 Section 303(d) List of Water Quality Limited Segments, Colorado River Basin Regional Water
2 Quality Control Board, available at
3 http://www.waterboards.ca.gov/coloradoriver/water_issues/programs/tmdl/rb7_303d_list.shtml.)

4 The 303(d) list for the New River does not identify ammonia or any other pollutant at issue in the
5 Complaint as a pollutant stressor except that it identifies toxicity and states that the source is
6 unknown. The Regional Board's statements in the Complaint and Attachment K are wholly
7 inconsistent with and in no way supportable by the state 303(d) list.

8 Moreover, if there were impairment in the New River, the Regional Board has not
9 established that National Beef caused Pass Through or Interference at the Brawley POTW. *See*
10 National Beef's Memorandum of Law regarding the Requisite Proof of Causation pursuant to 40
11 C.F.R. 403.3. All the evidence establishes that the cause of the City of Brawley's NPDES
12 violations was the design and operation of the Brawley POTW, not National Beef. This is
13 evidenced by the fact that the City's violations only ceased after the City of Brawley finally
14 complied with nearly 20 years of Board orders and completed and implemented comprehensive
15 changes to its design and operation.

16
17 The Regional Board assigned a score of 5 to this factor. Given that the Regional Board's
18 statements regarding impact to the New River cannot be supported with the Regional Board's
19 own documents, a score of 0 is applicable.

20 **(2) Physical, chemical, biological or thermal characteristics of the**
21 **discharge**

22 The Regional Board states that National Beef's discharge presented a significant risk or
23 threat to potential receptors, and gave National Beef a score of 4 for this factor – the highest
24 score. "Significant risk or threat to potential receptors" is described in the Enforcement Policy as
25 "the chemical and/or physical characteristics of the discharged material far exceed risk factors or
26 receptor harm is considered imminent." Enforcement Policy, at 13. In support of this
27
28

1 determination, the Regional Board again identified National Beef as the "main controllable
2 source of chronic and acute toxicity," which, as described above, is actually attributable to the
3 City of Brawley. In addition, the Regional Board found that "NBC has also discharged
4 excessively high concentrations of BOD and TSS, including slug load at times. Consequently,
5 these high concentrations of ammonia, BOD, and TSS, at a minimum, had the reasonable
6 potential to cause Pass Through and/or Interference with the Brawley WWTP ..." Attachment K,
7 at 3.

8 This is a gross misstatement of the Federal Clean Water Act and the California Water
9 Code pretreatment requirements. "Reasonable potential" is not an element of any violation
10 alleged in the Complaint, and certainly is not part of the Pass Through or Interference prohibition
11 at 40 C.F.R. Section 403.5. Section 403.5 of the Clean Water Act implementing regulations
12 states, "A User may not introduce into a POTW any pollutant(s) which cause Pass Through or
13 Interference." 40 CFR 403.3(a)(1). As discussed in National Beef's Memorandum of Law
14 regarding the Requisite Proof of Causation pursuant to 40 C.F.R. 403.3, in order to prove pass-
15 through and interference violations, it must be shown that an NPDES permit violation has
16 occurred, and that the Industrial User being charged caused that violation to occur. A "reasonable
17 potential" to cause Pass Through and Interference does not pass the regulatory muster. The
18 Regional Board's failure to properly state and then evaluate relevant facts and law is further
19 evidence of its abuse of power.

20
21 The Regional Board has failed to allege, much less establish, that even one National Beef
22 discharge resulted in Pass Through or Interference. In this instance a score of 0 is applicable.

23 **(3) Susceptibility to Cleanup or Abatement**

24 The Regional Board assigned a score of 1 for this factor. The Regional Board did not
25 expand on how this factor was determined. The Enforcement Policy states, "A score of 1 is
26 assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement."
27
28

1 Enforcement Policy, at 13. National Beef reiterates that its facility is now closed. Thus the
2 discharge is susceptible to 100% abatement and a score of 0 must be assigned pursuant to the
3 Enforcement Policy.

4 **ii) Step 2**

5 Step two of the Enforcement Policy discusses volume and multiple-day penalties for
6 discharges by evaluating the potential for harm and the extent of deviation from requirements.
7 The Regional Board assigned National Beef a score of 1 – the highest score – based on a major
8 deviation and significant potential for harm. "Major" deviation is described in the Enforcement
9 Policy as "the requirement has been rendered ineffective (e.g., discharger disregards the
10 requirement, and/or the requirement is rendered ineffective in its essential functions)."
11 Enforcement Policy, at 14. As set forth in National Beef's Memorandum of Law establishing the
12 affirmative defense of 40 C.F.R. section 403.5(a), National Beef was in compliance with a
13 "Pretreatment Standard" under the federal Clean Water Act a majority of the time. Thus, during
14 such compliance there cannot as a matter of law be a deviation. Moreover, National Beef's
15 Memorandum of Law regarding the Requisite Proof of Causation pursuant to 40 C.F.R. 403.3,
16 and in National Beef's Memorandum of Law regarding the Affirmative Defenses in 40 CFR
17 403.5, National Beef establishes that its actions did not render the pretreatment requirements
18 ineffective – the City of Brawley's inadequate design and operation of its POTW did.
19

20 A proper and accurate analysis of the facts and application of the law requires that a score
21 of 0 be assessed for this factor.

22 **iii) Step 3**

23 Step three of the Enforcement Policy describes per-day assessments for non-discharge
24 violations. National Beef does not take issue with the Regional Board's evaluation of this step.

25 **iv) Initial Amount of Liability**

1 Based on steps one through three, the Regional Board proposes a penalty of \$3,750,000.
2 This penalty is based on the statutory maximum penalty of \$10,000 per day, for a total of 375
3 days. There is no requirement that the statutory maximum penalty be imposed, and the facts of
4 this case do not warrant it.³ In addition, of the 375 violations alleged, 316 are for the same
5 alleged discharge – ammonia. Putting aside that the Complaint attempts to assess penalties for
6 the City's violations of its NPDES permit as opposed to National Beef discharges that cause Pass
7 Through or Interference (*See* National Beef's memorandum of Law regarding the Requisite Proof
8 of Causation pursuant to 40 C.F.R. 403.3) the Complaint assesses multiple penalties for the same
9 alleged violation. The Complaint assesses as violations for the same time period:

- 10 • 21 days of ammonia monthly average concentration violations
- 11 • 21 days of ammonia monthly average mass load violations
- 12 • 92 days of ammonia daily maximum concentration violations
- 13 • 92 days of ammonia daily mass load violations
- 14 • 90 instances of varying degrees of Whole Effluent Toxicity violations

15 Clearly there is great error and abuse in this assessment of 316 violations for essentially
16 some alleged conduct during a 60-month period. In addition, as stated above, the Complaint
17 alleges Pass Through and Interference based on the City's discharges, not National Beef's

18
19 ³ In addition, the Regional Board erred in not appropriately determining the number of days of violations. The Enforcement
20 Policy is clear that "certain situations that involve multiple violations are treated as a single violation per day, such as a single
21 operational upset that leads to simultaneous violations of more than one pollutant parameter." Enforcement Policy, at 17. The
22 Enforcement Policy also allows a single base liability amount can also be assessed for multiple violations at the discretion of the
23 Water Boards, under the following circumstances:

- 24 a. The facility has violated the same requirement at one or more locations within the facility;
- 25 b. A single operational upset where violations occur on multiple days;
- 26 c. The violation continues for more than one day;
- 27 d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the
28 Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a
construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a
requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a
requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that
temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three
distinct violations that may be addressed with a single base liability amount.

Enforcement Policy, at 17-18. The allegations against National Beef were not properly computed.

1 discharges, which is contrary to the definition of Pass Through and Interference and the elements
2 of a cause of action for the same.

3 The Complaint allegation of 375 violations is erroneous and cannot be supported.

4 **v) Step 4**

5 Step four of the Enforcement Policy contains adjustment factors and allows adjustments
6 for culpability, cleanup and cooperation, and history of violations. Enforcement Policy, at 17.
7 The Regional Board chose not to apply adjustment factors and instead assigned multipliers of 1.0
8 to each category.

9 **(1) Culpability**

10 The Regional Board found that National Beef was "aware that it was discharging
11 pollutants to" the City of Brawley POTW. Attachment K, at 4. The Regional Board further stated
12 that National Beef's discharge resulted in the City violating its NPDES permit limits, and that
13 National Beef "was informed by the city of Brawley of these violations and continued to operate
14 without timely and effectively addressing these issues." Attachment K, at 4. The Regional Board
15 found that National Beef had "actual or constructive knowledge for more than 10 years that its
16 inadequately pretreated wastewaters were causing or contributing to Pass Through and/or
17 Interference with the city of Brawley's WWTP." Attachment K, at 4. Therefore, the Regional
18 Board assigned a multiplier of 1 (based on a 0.5 to 1.5 scale).

19 The Regional Board's allegations in support of its culpability determination are
20 completely unsupported by the facts of this case. As discussed in National Beef's Memorandum
21 of Law in Support of Its Affirmative Defense under 40 C.F.R. 403.5, National Beef was
22 unaware, through either constructive or actual knowledge, of Pass Through or Interference
23 violations. To the contrary, the City of Brawley instructed National Beef that it could adequately
24 handle its discharge and, in the event of exceedances, issued notices of violation which never
25

1 contained allegations of Pass Through or Interference. In 2014, the Regional Board approved the
2 City's ordinance limits, which National Beef had been in compliance with a majority of the time.

3 In addition, the Regional Board's assertion that National Beef had knowledge for more
4 than a decade is ridiculous. First, National Beef did not purchase the facility until 2006. In
5 addition, if Pass Through and Interference violations began occurring in 2001, the Regional
6 Board has an obligation under the Enforcement Policy and the California Water Code to timely
7 bring an enforcement action. The Regional Board did not bring an action until 2014 – 13 years
8 after the alleged Pass Through and Interference began. This does not show that National Beef sat
9 idly and routinely caused Pass Through and Interference, but instead further highlights the
10 arbitrary nature of the Regional Board's decision to bring this punitive action at this time.

11 National Beef has no culpability in this matter and 0.5 is the only score that can be
12 supported.

13 **(2) Cleanup and Cooperation**

14 The Regional Board assigned a multiplier of 1.0 (on a scale of 0.75 to 1.5) for the cleanup
15 and cooperation factor. The Regional Board states that National Beef "did not voluntarily
16 cooperate in returning to compliance and ceasing discharges that caused and/or contributed to
17 Pass Through and/or Interference with the city of Brawley's WWTP." Attachment K, at 4.
18 However, the Regional Board found that National Beef "cooperated with the Board with respect
19 to [a prior] Order," "was at times responsive to the city of Brawley's citations for effluent
20 violations," and "on several different occasions, the plant halted operations to address
21 compliance problems ..." Attachment K, at 4.

22 While the Regional Board states that National Beef has not been cooperative, the actions
23 described in Attachment K make clear that National Beef has been cooperative with both the
24 Regional Board and the City of Brawley. In addition, National Beef spent more than \$14 million
25 to upgrade its system to comply with the City of Brawley pretreatment limits. National Beef has
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1 also been in essentially constant communication with the City regarding wastewater discharges
2 during which the City at no time alleged or indicated Pass Through or Interference. National
3 Beef has been incredibly cooperative before and throughout this process. The crowning fact is
4 that National Beef closed the facility, thus completely ceasing all discharges. A 0.75 multiplier
5 is the maximum that can be supported.

6 **(3) History of Violations**

7 The Regional Board assessed a multiplier of 1.0 for history of violations. National Beef
8 would like to highlight the Regional Board's statement in support of its multiplier: "There is no
9 history of repeat violations by the Discharger."

10 **vi) Step Five**

11 Step five totals up the base liability amount using the figures derived in steps one through
12 three and the multipliers in step four and proposes a penalty of \$3,750,000. As described above,
13 there are multiple flaws in the Regional Board's penalty assessment.

14 **vii) Step Six**

15 Step six discusses the discharger's ability pay. The Regional Board determined that
16 National Beef has the ability to pay the proposed liability and continue to operate. National Beef
17 again reiterates that it has closed down its plant.

18 **viii) Step Seven**

19 Step seven allows the Regional Board to consider "other factors as justice may require."
20 Enforcement Policy, at 19. The Regional Board found that there are no other factors as just may
21 require that need to be considered at this time. Attachment K, at 4

22 The Enforcement Policy provides a non-comprehensive list of circumstances that may
23 warrant an adjustment, including that the calculated amount is entirely disproportionate to
24 assessments for similar conduct made in the recent past using the same Enforcement Policy.
25 Enforcement Policy, at 19. This example is directly applicable to this case. Last year, the
26

1 Regional Board brought an action against the City of Brawley for its NPDES permit violations –
2 almost the identical issue to this case. However, in that case, the Regional Board assessed a \$1
3 million penalty – almost 75-percent lower than the statutory maximum \$3,750,000 penalty the
4 Regional Board seeks to assess in this case – against the City. This result is completely
5 inconsistent, disproportionate and unexplainable, as the direct discharger that has ultimate
6 responsibility for its effluent received a slap on the wrist compared to the statutory maximum
7 penalty proposed against National Beef (the indirect user).

8 The obvious factors that should be considered are the Regional Board's assessment of
9 \$1,000,000 in administrative fines against the City for the same allegations in the Complaint.
10 The Regional Board is trying to recover twice for the same set of discharges, once against the
11 City and once against National Beef. In addition, the \$713,000 paid by National Beef to the City
12 for violations of the City Ordinance local limits is a direct offset to any penalty that could be
13 justified in this proceeding.

14 **ix) Step Eight**

15 Step eight discusses the economic benefit of noncompliance. The Enforcement Policy
16 states that "Economic benefit is any savings or monetary gain derived from the act or omission
17 that constitutes the violation." Enforcement Policy, at 20. The Enforcement Policy also
18 prescribes the process for calculating the economic benefit. Enforcement Policy, at 20.

19 The Regional Board provided the economic benefit assessment in Attachment M to the
20 Complaint. The Regional Board's economic benefit analysis is wholly insufficient and
21 inaccurate. See the expert testimony of James Paskell in this matter.

22 **x) Step Nine**

23 Step nine of the Enforcement Policy discusses the maximum and minimum liability
24 amounts. Attachment K references paragraphs 58 through 60 of the Complaint. Paragraph 59 of
25 the Complaint states that the minimum liability for non-mandatory minimum penalties must be at
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1 least 10 percent higher than the economic benefit or savings received resulting from the
2 violations. Paragraph 60 of the Complaint states that because the economic benefit with the 10-
3 percent markup is higher than the statutory maximum penalty, the statutory maximum penalty
4 will be assessed on National Beef.

5 National Beef disagrees that this is a required construction of the California Water Code
6 and Enforcement Policy. Section 13385 provides clear factors for consideration in penalty
7 assessment. When these factors are considered then the maximum statutory penalty is
8 determined. The maximum statutory penalty is not determined simply by applying the statutory
9 maximum.

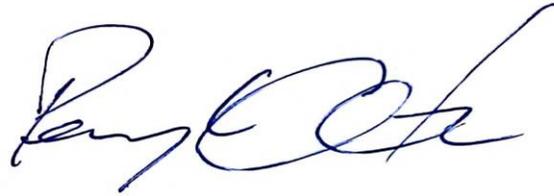
10 **xi) Step Ten**

11 Step 10 of the Enforcement Policy is the final liability amount. The Enforcement Policy
12 states that the administrative record must reflect how the Regional Board arrived at the final
13 liability amount. Enforcement Policy, at 21. As National Beef has described above, the Regional
14 Board's penalty assessment, contained in Attachment L to the Complaint, is inaccurate and
15 erroneously applies facts and law. In addition, the half-page matrix provided in Attachment L
16 does not meet the requirements of reflecting how the Regional Board arrived at the penalty
17 calculation, as required by the Enforcement Policy.

18 **3. Conclusion**

19 For all of the foregoing reasons, the Regional Board's assessed penalty should be struck
20 from the Complaint.
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1 Dated: September 18, 2014
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2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

REGION	TYPE	WATER BODY NAME	CALWATER WATERSHED	POLLUTANTS/STRESSOR	POTENTIAL SOURCES	ESTIMATED SIZE AFFECTED	PROPOSED TMDL COMPLETION
7	R	Alamo River	72310000	Chlordane	Source Unknown	57 Miles	2021
				Chlorpyrifos	Source Unknown	57 Miles	2019
				DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	57 Miles	2019
				Diazinon	Source Unknown	57 Miles	2021
				Dieldrin	Source Unknown	57 Miles	2019
				Endosulfan	Source Unknown	57 Miles	2021
				Enterococcus	Source Unknown	57 Miles	2021
				Escherichia coli	Source Unknown	57 Miles	2021
				Mercury	Source Unknown	57 Miles	2021
				PCBs (Polychlorinated biphenyls)	Source Unknown	57 Miles	2019
				Sedimentation/Siltation	Agricultural Return Flow	57 Miles	2002
				Selenium	Out-of-state source	57 Miles	2019

Selenium originates from Upper Basin Portion of Colorado River. Elevated fish tissue levels. For 2006, selenium was moved by USEPA from the being addressed list back to the 303(d) list pending completion and USEPA approval of a TMDL.

2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

REGION	TYPE	WATER BODY NAME	CALWATER WATERSHED	POLLUTANTS/STRESSOR	POTENTIAL SOURCES	ESTIMATED SIZE AFFECTED	PROPOSED TMDL COMPLETION
				Toxaphene	Source Unknown	57 Miles	2019
7	R	Coachella Valley Storm Water Channel	71947000	DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	24 Miles	2021
				<i>This listing for DDT only applies to a 2 mile area of the Coachella Valley Storm Water Channel from Lincoln Street to the Salton Sea.</i>			
				Dieldrin	Source Unknown	24 Miles	2021
				<i>This listing for Dieldrin only applies to a 2 mile area of the Coachella Valley Storm Water Channel from Lincoln Street to the Salton Sea.</i>			
				PCBs (Polychlorinated biphenyls)	Source Unknown	24 Miles	2021
				<i>This listing for PCBs only applies to a 2 mile area of the Coachella Valley Storm Water Channel from Lincoln Street to the Salton Sea.</i>			
				Pathogens	Source Unknown	24 Miles	2010
				<i>This listing for pathogens only applies to a 17 mile area of the Coachella Valley Storm Water Channel from Dillon Road to the Salton Sea.</i>			
				Toxaphene	Source Unknown	24 Miles	2019
				<i>This listing for Toxaphene only applies to a 2mile area of the Coachella Valley Storm Water Channel from Lincoln Street to the Salton Sea.</i>			
7	R	Colorado River (Imperial Reservoir to California-Mexico Border)	72700000	Selenium	Source Unknown	11 Miles	2019

2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

REGION	TYPE	WATER BODY NAME	CALWATER WATERSHED	POLLUTANTS/STRESSOR	POTENTIAL SOURCES	ESTIMATED SIZE AFFECTED	PROPOSED TMDL COMPLETION
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7	R	Imperial Valley Drains	72310000	Chlordane	Source Unknown	1225 Miles	2021
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This listing for Chlordane only applies to the Barbara Worth Drain, Peach Drain, Greeson Drain, South Central Drain, and Holtville Main Drain areas of the Imperial Valley drains.

				DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	1225 Miles	2019
--	--	--	--	--	----------------	------------	------

The listing for DDT only applies to the Barbara Worth Drain, Peach Drain, and Rice Drain areas of the Imperial Valley drains.

				Dieldrin	Source Unknown	1225 Miles	2019
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The listing for dieldrin only applies to the Barbara Worth Drain, and Fig Drain areas of the Imperial Valley drains.

				Endosulfan	Source Unknown	1225 Miles	2019
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The listing for Endosulfan only applies to the Peach Drain area of the Imperial Valley drains, from Meloland Road to the outlet into the Alamo River.

				PCBs (Polychlorinated biphenyls)	Source Unknown	1225 Miles	2019
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The listing for PCBs only applies to the Central Drain area of the Imperial Valley drains.

				Sedimentation/Siltation	Agricultural Return Flow	1225 Miles	2005
--	--	--	--	-------------------------	-----------------------------	------------	------

				Selenium	Agricultural Return Flow	1225 Miles	2019
--	--	--	--	----------	-----------------------------	------------	------

Selenium originates from Upper Basin Portion of Colorado River. Elevated fish tissue levels.

2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

REGION	TYPE	WATER BODY NAME	CALWATER WATERSHED	POLLUTANTS/STRESSOR	POTENTIAL SOURCES	ESTIMATED SIZE AFFECTED	PROPOSED TMDL COMPLETION
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				Toxaphene	Source Unknown	1225 Miles	2019
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The listing for Toxaphene only applies to the Barbara Worth Drain, Peach Drain, and Rice Drain of the Imperial Valley drains.

7	R	New River (Imperial County)	72310000	Chlordane	Source Unknown	66 Miles	2019
				Chlorpyrifos	Source Unknown	66 Miles	2019
				Copper	Source Unknown	66 Miles	2019
<p><i>In the final decision for the 2006 303(d) list, USEPA determined that this pollutant water body combination should be listed on the 303(d) (TMDL required list). This listing was made by USEPA for 2006.</i></p>							
				DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	66 Miles	2019
				Diazinon	Source Unknown	66 Miles	2019
				Dieldrin	Source Unknown	66 Miles	2019
				Hexachlorobenzene/HCB	Source Unknown	66 Miles	2021
				Nutrients		66 Miles	2019

- Agricultural Return Flows
- Major Municipal Point Source-dry and/or wet weather discharge
- Out-of-state source

Regional Board proposes to establish TMDL in cooperation with US EPA and Mexico.

2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

REGION	TYPE	WATER BODY NAME	CALWATER WATERSHED	POLLUTANTS/STRESSOR	POTENTIAL SOURCES	ESTIMATED SIZE AFFECTED	PROPOSED TMDL COMPLETION
				Mercury	Source Unknown	66 Miles	2019
				Organic Enrichment/Low Dissolved Oxygen	Source Unknown	66 Miles	2010
				PCBs (Polychlorinated biphenyls)	Source Unknown	66 Miles	2019
				Pathogens		66 Miles	2002
					<ul style="list-style-type: none"> • Confined Animal Feeding Operations (NPS) • Municipal Point Sources • Out-of-state source • Point Source • Wastewater 		
				Sediment	Source Unknown	66 Miles	2003
				Selenium	Source Unknown	66 Miles	2019
				Toxaphene	Source Unknown	66 Miles	2019
				Toxicity	Source Unknown	66 Miles	2019
				Trash	Out-of-state source	66 Miles	2007
				Zinc	Source Unknown	66 Miles	2021
7	R	Palo Verde Outfall Drain and Lagoon	71540000	DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	19Miles	2019

2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

REGION	TYPE	WATER BODY NAME	CALWATER WATERSHED	POLLUTANTS/STRESSOR	POTENTIAL SOURCES	ESTIMATED SIZE AFFECTED	PROPOSED TMDL COMPLETION
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				Pathogens	Source Unknown	19Miles	2019
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This listing was made by USEPA for 2006.

				Toxaphene	Source Unknown	19Miles	2021
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7	S	Salton Sea	72800000	Arsenic	Source Unknown	233340 Acres	2021
				Chlorpyrifos	Source Unknown	233340 Acres	2021
				DDT (Dichlorodiphenyltrichloroethane)	Source Unknown	233340 Acres	2021
				Enterococcus	Source Unknown	233340 Acres	2021
				Nutrients		233340 Acres	2019
					<ul style="list-style-type: none"> • Agricultural Return Flows • Major Industrial Point Source • Out-of-state source 		
				Salinity		233340 Acres	2019
					<ul style="list-style-type: none"> • Agricultural Return Flows • Out-of-state source • Point Source 		

TMDL development will not be effective in addressing this problem, which will require an engineering solution with federal, local, and state cooperation.

2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

REGION	TYPE	WATER BODY NAME	CALWATER WATERSHED	POLLUTANTS/STRESSOR	POTENTIAL SOURCES	ESTIMATED SIZE AFFECTED	PROPOSED TMDL COMPLETION
				Selenium	Source Unknown	233340 Acres	2019
7	L	Wiest Lake	72310000	DDT (Dichlorodiphenyltrichloroethane	Source Unknown	42 Acres	2021

2010 CWA SECTION 303(d) LIST OF WATER QUALITY LIMITED SEGMENTS

COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD

USEPA APPROVAL DATE: OCTOBER 11, 2011

ABBREVIATIONS	
<u>REGIONAL WATER QUALITY CONTROL BOARDS</u>	<u>WATER BODY TYPE</u>
1. North Coast	B = Bays and Harbors
2. San Francisco Bay	C = Coastal Shorelines/Beaches
3. Central Coasts	E = Estuaries
4. Los Angeles	L = Lakes/Reservoirs
5. Central Valley	R = Rivers and Streams
6. Lahontan	S = Saline Lakes
7. Colorado River Basin	T = Wetlands, Tidal
8. Santa Ana	W = Wetlands, Freshwater
9. San Diego	

CALWATER WATERSHED

“Calwater Watershed” is the State Water Resources Control Board hydrological subunit area or an even smaller area delineation.

GROUP A PESTICIDES OR CHEM A

aldrin, dieldrin, chlordane, endrin, heptachlor, heptachlor epoxide, Hexachlorocyclohexane (including lindane), endosulfan, and toxaphene

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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 ("COMPLAINT") CITY
OF BRAWLEY-IMPERIAL
COUNTY

DISCHARGER'S OBJECTIONS TO
LACK OF DUE PROCESS IN
HEARING PROCEDURE

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I.

INTRODUCTION

National Beef California, LP ("National Beef" or "Discharger") restates its previously filed objections to Proposed Hearing Procedure Set Forth in Public Notice 7-14-27, April 11, 2014, objection to certain hearing procedures and to timeframes and deadlines set forth in Public Notice 7-14-27, April 11, 2014, and objection to hearing procedures set for the in Public Notice 7-14-36, May 20, 2014 because the procedures and deadlines do not afford National Beef rights of Due Process guaranteed by the United States Constitution, the California Constitution, and the California Administrative Procedure Act, CAL. GOV. CODE § 11340 *et seq.* In addition, National Beef incorporates herein by reference its contemporaneously filed Motion to Dismiss for Lack of Due Process based on the Regional Board staff's failure to adhere to the constitutionally required separation of functions.

II.

OBJECTIONS TO HEARING PROCEDURES

The Assistant Executive Officer of the Regional Board has stated that this "is the largest penalty he has seen in 17 years working in the Colorado River Basin region." The Desert Sun (April 15, 2014). The hearing procedures offered and the times for and timeframes between events in the Table of Important Deadlines in the Public Notice do not reflect an appreciation of the seriousness of this matter and thus paint the \$3,750,000 penalty as a *fait accompli*. The complaint alleges 375 instances of pass through and interference. This is not a straight forward enforcement action based upon effluent testing data from National Beef plant wastewater discharges. The allegations in the Board Complaint are dependent upon a demonstration that National Beef's discharges caused pass through of or interference to the City of Brawley publicly-owned treatment works ("POTW"). Therefore, this action necessarily will involve an examination of the City of Brawley POTW, influent to the POTW, and operation of the

1 POTW over the time period of the allegations. These areas of inquiry have required
2 extensive discovery of documents and data from third parties to date. The reality of this
3 process is that it would take several more months to adequately gather all of the relevant
4 data and conduct depositions. National Beef would then be able to analyze the data in
5 order to properly prepare its defenses to the allegations. It was simply not possible for
6 National Beef to complete the investigation and analysis needed to fully and completely
7 defend the allegations by the September 18, 2014 deadline for its submission of
8 evidence. In spite of this handicap, National Beef has presented arguments that are
9 more than sufficient to defeat the Complaint. That notwithstanding, it has been forced
10 to do so without the time or ability to fully discovery and investigate issues relevant to
11 this defense.

12 National Beef previously objected to each of the time limits set forth in the
13 Hearing Time Limits section on page 7 of the Public Notices as those apply to National
14 Beef. The Hearing Time Limits in the initial Public Notice provided 30 minutes for
15 presentation of testimony and evidence and cross-examination. In response to National
16 Beef's objections and request for a minimum of 10 hours to present its affirmative case,
17 the Hearing Time Limits for National Beef was extended to only 2.5 hours. Discharger
18 has a right to a hearing, not to provide a briefing to the Regional Board. The Complaint
19 alleges 375 violations and seeks a \$3,750,000 civil penalty. The violations alleged in
20 the Complaint present complex issues of law and fact. Each violation is separate, has
21 been individually alleged in the Complaint, and a proposed civil penalty has been
22 calculated for each alleged violation. Discharger has a right to defend each violation
23 individually as alleged and to do so before the Regional Board. Without time to prepare
24 and present, Discharger effectively will not have Due Process. Discharger will provide
25 testimony from a company representative. This will require an hour or more.
26 Discharger will provide the testimony of three expert witnesses. At a minimum, an hour
27 for each expert witness will be needed to summarize the pre-filed expert testimony to
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1 the Regional Board. Discharger needs to cross-examine the Prosecution's witnesses. If
2 only 30 seconds are taken for cross-examination of each of the 375 allegations, there
3 would be over three hours of cross-examination. Rebuttal will be made as well,
4 requiring additional time. A minimum of 10 hours as previously requested by National
5 Beef is necessary to provide National Beef adequate protection of due process.

6 Without sufficient time for presentation of testimony and witnesses and for
7 cross-examination, Discharger will not be afforded adequate Due Process. Article I, § 7
8 of the California Constitution provides that a person may not be deprived of life, liberty
9 or property without due process of law. A deprivation of property (including monetary
10 fines) must be preceded by "notice and opportunity for hearing appropriate to the nature
11 of the case." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *see, e.g.,*
12 *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974); *Phillips v. Commissioner of Internal*
13 *Revenue*, 283 U.S. 589, 596-97 (1931); *Dent v. West Virginia*, 129 U.S. 114, 124-25
14 (1889). The indispensable requirement of due process is the opportunity to be heard "at
15 a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545,
16 552 (1965); *see also Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental
17 requisite of due process of law is the opportunity to be heard.").

18 The concept of due process "is flexible and calls for such procedural protections
19 as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976);
20 *Marvin Lieblein, Inc. v. Shewry*, 137 Cal. App. 4th 700, 721 (Cal. App. 3d 2006). This
21 flexibility allows due process to be tailored to each situation to "serve the purpose of
22 minimizing the risk of error." *Heller v. Doe*, 509 U.S. 312, 332 (1993). To account for
23 flexibility when evaluating whether adequate due process was given, the United States
24 Supreme Court developed a three-part balance test: "First, the private interest that will
25 be affected by the official action; second, the risk of an erroneous deprivation of such
26 interest through the procedures used, and the probable value, if any, of additional or
27 substitute procedural safeguards; and finally, the Government's interest, including the

1 function involved and the fiscal and administrative burdens that the additional or
2 substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335; *see also*
3 *Turner v. Rogers*, 131 S.Ct. 2507, 2517 (2011); *Wilkinson v. Austin*, 545 U.S. 209,
4 224–225 (2005). California courts have adopted this three-part balancing test to evaluate
5 sufficiency of proceedings under its own due process clause, and has added a fourth
6 factor for consideration in some cases: "the dignitary interest in informing individuals of
7 the nature, grounds, and consequences of the action and in enabling them to present
8 their side of the story before a responsible government official." *Today's Fresh Start,*
9 *Inc. v. Los Angeles Cnty. Office of Educ.*, 57 Cal. 4th 197, 213 (Cal. 2013). Regardless
10 of the flexible standard, it is an absolute that due process requires that parties be "given
11 a meaningful opportunity to present their case." *S. Cal. Underground Contractors, Inc.*
12 *v. City of San Diego*, 108 Cal. App. 4th 533, 545 (Cal. App. 4th 2003) (citing *Mathews*,
13 424 U.S. at 346). Specifically, in cases where decisions turn on factual disputes, such as
14 the case here, due process includes the right to present evidence and confront and cross-
15 examine adverse witnesses. *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970).

16 As a matter of practice, the State and Regional Water Boards routinely provide
17 longer hearings in water quality matters. In a recent example in the enforcement
18 context, the North Coast Board provided a day-long hearing in an administrative civil
19 liability complaint against the California Department of Transportation and MCM
20 Construction, Inc., which alleged violations of a Clean Water Act 401 Certification and
21 storm water permit, with a recommended liability of \$1,511,000. *In the Matter of the*
22 *Petitions of California Dep't of Transp. and MCM Const., Inc.*, Order WQ 2014-0015
23 (State Bd. 2014). There, the alleged violators were collectively allowed four hours of
24 hearing time and the Board Prosecution Team was provided two hours in a case seeking
25 only 40% of the penalty the Board is seeking from National Beef. *See Transcript, In the*
26 *Matter of RI-2009-095 Against Caltrans, Confusion Hill* (Region 1, Feb. 1, 2012). In
27 two other recent examples in the permitting context, the San Diego and Los Angeles
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1 Boards each provided three days of testimony in hearings on regional permits. *See*
2 Board Order Nos. R9-2013-0001 (Region 9, 2013) and R4-2012-0175 (Region 4, 2012).
3 In addition, water rights matters routinely receive significantly longer hearing times
4 before the State and Regional Water Boards in large part due to the presentation of
5 expert testimony as is necessary in this case.

6 In light of the above, 2.5 hours is not adequate by any standard to afford
7 adequate due process and Discharger reasserts its request for a minimum of 10 hours to
8 defend the allegations in the Complaint.

9 Additionally, in accordance with provisions in the Hearing Time Limits
10 statement, Discharger reserves the right prior to and during the hearing to request
11 further additional time for presentation of its defenses.

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Dated: September 18, 2014

STINSON LEONARD STREET LLP

By: 

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Attorneys for Defendant

National Beef California, LP

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

Witness List

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Attorneys for Discharger:

National Beef California, LP

1 1. William A. "Bud" Ludwig, Jr.
2 Corporate Environmental Director
3 National Beef Packing Company, LLC

4 Mr. Ludwig will testify regarding the National Beef California wastewater pretreatment
5 system, evaluations of the pretreatment system, compliance measures, capital improvements,
6 costs of improvements and operations, and compliance with City local limits.

7 Direct testimony: 20 minutes.

8 2. James D. Paskell
9 President, Litigation and Liability Management, LLC

10 Expert witness: Mr. Paskell will testify regarding the Regional Board's assertion of
11 economic benefit. Qualifications are provided in prefiled testimony.

12 Direct testimony: 20 minutes.

13 3. Peter S. Silva
14 Silva International

15 Expert witness: Mr. Silva will testify regarding the Regional Board's interpretation and
16 implementation of applicable laws, regulations, and policy in this action. Qualifications are
17 provided in prefiled testimony.

18 Direct testimony: 20 minutes.

19 4. Nathan Warren Zaugg, P.E.
20 MWH Global
21 Industrial Wastewater Practice Lead

22 Expert witness: Mr. Zaugg will testify regarding City of Brawley and National Beef
23 California wastewater treatment system design and performance, POTW treatment of industrial
24 user discharges, and POTW NPDES violations and the causes of such violations.
25 Qualifications are provided in prefiled testimony.

26 Direct testimony: 20 minutes.

27 5. Jim Stahl
28 Vice President, Senior Technical Advisor
MWH Global

Expert witness: Mr. Stahl will testify regarding design and operation of the City of
Brawley and National Beef California wastewater treatment systems and regarding the cause of
violations of the City NPDES permit. Qualifications are provided in prefiled testimony.

Direct testimony: 20 minutes.

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Dated: September 18, 2014.

By: 
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STATE OF CALIFORNIA
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

TESTIMONY OF WILLIAM A. "BUD"
LUDWIG, JR.

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Attorneys for Discharger:

National Beef California, LP

1 My name is William A. "Bud" Ludwig, Jr. I reside at 12800 W. 142nd Street, Overland Park,
2 Kansas 66221.

3 I am the Corporate Environmental Director of National Beef Packing Company, LLC and its
4 associated entities, including National Beef California, L.P. ("National Beef"). I focus on the
5 permitting and oversight of environmentally related matters at National Beef to identify and
6 comply with federal, state and local environmental laws and regulations applicable to National
7 Beef operations. Beginning in March 2006 when National Beef was conducting due diligence
8 for the potential purchase of the Brawley Beef assets and continuing through the May 2014
9 closing of the National Beef Brawley plant until today when post-closing environmental
10 activities continue, I have been involved with wastewater pretreatment.

11 1. Before National Beef bought the beef plant in June 2006 did National Beef evaluate
12 wastewater matters?

13 Yes, we did evaluate the wastewater situation. One of the most important questions to answer
14 when evaluating the purchase of a beef plant is whether there is adequate wastewater service to
15 support plant operations. This is critical to the successful and profitable operation of the plant.

16 In the case of the Brawley plant wastewater services are provided by the City. National Beef
17 found that the City had a current valid wastewater discharge permit and had a wastewater
18 pretreatment ordinance for the control of industrial wastewater discharges with local limits
19 similar to that of other cities. See Defendant Exhibits 988 and 814. In addition, the City
20 informed National Beef that the City was in the process of completing significant upgrades to
21 its treatment plant under a design by Nolte Engineering. The upgrades would bring the City
22 plant to a 5.9 million gallon per day capacity and were scheduled to be completed by July 2006.
23 See Defendant Exhibit 691.

24 The adequacy of wastewater service was secured under a contract between the City and the
25 then owner of the beef plant, Brawley Beef. See Defendant Exhibit 16. National Beef
26 discussed this contract with the City to confirm that the City would stand by its commitments.

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a. Did National Beef look specifically at the requirements for discharge of wastewater to the City's treatment system?

Yes. National Beef studied the City's wastewater pretreatment ordinance. See Defendant Exhibit 988. The City Ordinance basically was the EPA Model Industrial Pretreatment Ordinance for the control of industrial discharges to a municipal treatment plant, which incorporated a few changes to identify the ordinance as a City of Brawley ordinance. The City ordinance included local limits for pollutant discharges by industrial users. Ammonia limits were set at 30 milligrams per liter ("mg/l"). (See Defendant Exhibit 988.) The ordinance also included total suspended solids (TSS) and biochemical oxygen demand (BOD) limits of 250 mg/l each. Finally, the City had established surcharges for ammonia, Total Suspended Solids, and Biochemical Oxygen Demand. This model ordinance and local limits were typical of other municipalities around the country.

During the due diligence process National Beef met with City representatives including the City Manager and the Director of Public Works many times. Wastewater was one of the topics discussed. At no time during these discussions did the City indicate that it could not handle wastewater discharges from the beef plant and did not indicate that the 30 mg/l ordinance ammonia limit was anything but a valid local limit.

b. Was the beef plant pretreatment system able to meet the City ordinance requirements?

National Beef evaluated the adequacy of the beef plant wastewater pretreatment system by examining the pretreatment systems, pretreatment operations, and discharge quality and through discussion with Brawley Beef representatives. The systems and discharge quality were consistent with that of other beef plants in terms of type of treatment equipment and discharge quality. The fluctuations in ammonia effluent quality were especially evaluated by National Beef.

1 National Beef observed that the plant was exceeding the ordinance ammonia limit of 30 mg/l.
2 There were sporadic exceedances of the ordinance BOD limit. TSS was in compliance.
3 National Beef contacted the consultant to Brawley Beef that designed the pretreatment system
4 and learned that the pretreatment system had not been designed to treat ammonia because the
5 City had not yet enacted its Wastewater Pretreatment Ordinance at the time the beef plant was
6 designed and built. The City adopted the ordinance in September 2001, and the plant was
7 designed and built prior to that time with cattle processing beginning in late December 2001.
8 The treatment of beef plant wastewater is dependent upon biological treatment processes that,
9 by their nature, fluctuate and are very difficult to operate in extreme weather conditions, hot or
10 cold. Treatment of ammonia is dependent upon temperature and adequate aeration so that
11 ammonia-reducing bacteria can function well. When the weather is warmer and treatment
12 lagoon temperatures are warmer there is more biological activity that acts to reduce ammonia.
13 Additional dissolved oxygen must be added to the aerated treatment basin in order to maintain
14 sufficient dissolved oxygen residual to support that biological activity.
15 During due diligence, National Beef noted that one of the original aerators designed for
16 placement in pond 2 had been moved to pond 3. National Beef was told by Brawley Beef that
17 this was done at the City's request in the hope of treating ammonia. This movement restored
18 aeration capacity in pond 2 to the original design of 6 40HP aerators. Although the design was
19 for BOD treatment, the relocation of the aerator was a first positive step in adding treatment for
20 ammonia reduction.

21 c. The Regional Board now has stated that the City ordinance limits for ammonia
22 and other pollutants were of no meaning because they were not approved by the
23 Regional Board. Did National Beef have any indication that the ordinance
24 limits were not valid?

25 No, the City presented the ordinance limits as the requirements that applied to National Beef
26 discharges. During due diligence, National Beef reviewed a February 2, 2005 letter from
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1 Ruben Mireles of the City to Ed Fitzgerald of Brawley Beef notifying Brawley Beef that the
2 City was reducing the ammonia local limit from 40 mg/l to 30 mg/l. The letter states:

3 Your help ensuring that the City stay in compliance with all regulatory requirements
4 from the California Regional Water Quality control board is extremely important and
5 will allow the City to operate its Wastewater Treatment Plant within its designed
6 capabilities. Currently the City is under a Cleanup and Abatement order from the
7 Regional Board for ammonia toxicity and under design for treatment modifications to
8 the existing treatment system to be able to process higher levels of ammonia. This
design is an interim five-year solution at an estimated cost of 1.5 million dollars.
Brawley Beef's pretreatment effluent discharge needs to stay at or less than the 30-mg/l
ammonia concentration limit in order for the City to be successful in meeting the
California Regional Water Quality Control Board Bioassay test requirements.

9 (See Defendant Exhibit 16.) This letter gave Brawley Beef a 90 day grace period from January
10 18, 2005 to April 18, 2005 to reduce ammonia to meet the new more stringent 30 mg/l limit.

11 The City's action to lower the ammonia local limit indicated to National Beef that the City had
12 technical reliance on the ammonia local limit to meet the requirements of its discharge permit.

13 Through the nearly eight years National Beef relied on the City local limits there was never an
14 indication from any person that the local limits were not valid. Neither the City nor the
15 Regional Board ever indicated that compliance with those limits would not fulfill National
16 Beef's pretreatment responsibilities. There were dozens of meetings with the City wastewater
17 staff over the years to discuss the precise topic of achieving the City's ordinance requirements.

18 Over the course of 2008 through 2013 the City fined National Beef a total of \$723,000 for
19 failure to comply with the City local limits, primarily for ammonia, but also for total suspended
20 solids and biochemical oxygen demand. The Regional Board should have been well aware of
21 this. In addition, National Beef invested \$13,552,000 in capital improvements to the plant
22 wastewater pretreatment system for the express purpose of meeting the ordinance limits as
23 detailed below. Finally, the City assessed \$2,355,384 in ammonia, BOD, and TSS surcharges
24 over the time National Beef operated the plant. I have summarized these charges from city
25 invoices as depicted in Attachment B. It is inaccurate to think that National Beef or any other
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1 industrial discharger in National Beef's position could not reasonably rely on the City local
2 limits as the measure of compliance.

3 d. The City ordinance has a provision that requires large industrial contributors to
4 obtain a pretreatment permit from the City for wastewater discharges to the City
5 treatment plant. Did the City issue National Beef a permit?

6 No, the City did not issue National Beef a permit in 2006. National Beef requested that the
7 City issue a permit in 2006 and, at the same time, National Beef went so far as to draft and
8 present a permit to the City for consideration and issuance to implement the City ordinance
9 requirements. Despite National Beef's efforts, the City did not respond to the request. See
10 Attachment B. National Beef thus was forced to rely on the City's 2000 contract as
11 authorization for wastewater discharges from the beef plant and as further assurance that the
12 City had capacity and capability to take and treat plant wastewater. See Defendant Exhibit 16.

13 National Beef's evaluation of wastewater treatment resulted in three main points: (1) the beef
14 plant pretreatment system was typical in components, size, and operation but required
15 modifications to treat ammonia to consistently meet the ordinance limits; (2) the city was near
16 the end of construction of significant upgrades to its treatment system; and (3) there was the
17 expectation that these modifications and upgrades would come together to result in compliant
18 systems for both the beef plant and the City.

19 2. The Board's Complaint against National Beef tries to paint a picture of a rich company
20 that disregarded wastewater treatment responsibilities for an eight year period. Is this a
21 true picture of National Beef's behavior and record?

22 No, it is not an accurate picture of National Beef's significant investment of time, money, and
23 effort in wastewater treatment. The company's investments and responsiveness to wastewater
24 issues resulted in \$13,552,000 in capital improvements to the wastewater pretreatment system
25 over the period June 2006 through December 2013. In addition to that, National Beef invested
26 \$3,753,541 in operation and maintenance of the wastewater pretreatment system. This is a

1 total expenditure of \$17,306,000 over a seven and one-half year period. National Beef's record
 2 is clear that each time the beef plant experienced difficulties or was unable to meet the local
 3 limits, National Beef responded by investing additional capital and effort to ensure that the
 4 pollutant levels returned to compliance. The following is a summary of National Beef's efforts
 5 and expenditures:

6	Year	Expenditure	Project Description Summary
7	2007	\$677,000	Installation of baffle system in treatment pond 2 to create activated sludge treatment for ammonia reduction
8		\$36,000	Addition of aerators to treatment pond 2 for enhanced ammonia reduction
9	2008	\$129,000	Addition of aerators to treatment pond 2 for enhanced ammonia reduction
10		\$1,500,000	Covering of anaerobic lagoon for treatment efficiency consistency and for recovery of biogas
11	2009	\$379,000	Clean out of treatment pond 3 to reduce solids accumulation and enhance solids removal
12	2010	\$377,000	Sludge removal from pond 3 in order to reduce solids in discharge
13		\$146,000	Test for land application of sludge removed
14	2011	\$800,000	Aeration and other ammonia reduction measures in treatment pond 2
15		\$1,700,000	Addition of a belt press to handle solids removed through activated sludge process
16		\$1,400,000	Grease collection enhancement project at primary DAFs; increased grease capture and reduced loading to treatment pond 1
17		\$162,000	Aeration and reliability improvements in treatment pond 2
18		\$90,000	Purchase and installation of new effluent meters for TSS monitoring with automatic alarm to shut down discharge should TSS be above acceptable levels
19		\$17,000	Anaerobic lagoon cover repairs
20	2012	\$292,000	Treatment Pond 2 grease removal
21		\$528,000	Purchase and installation of dissolved air flotation unit for grease removal in effluent from pond 1, prior to discharge into pond 2
22		\$540,000	Treatment pond 2 aeration enhancements
23		\$192,000	Additional aeration in pond 2 to reduce ammonia
24		\$964,000	Additional grease control from pond 1; and solids dredging in pond 3c
25		\$96,000	Design and engineering for treatment pond 3c improvements recommended in HR Green report
26		\$245,000	Treatment pond 3c dredging
27		\$93,000	Treatment pond 3c supplemental dredging and solids disposal
28	2013	\$70,000	Sanitary sewer modifications for discharge control
		\$59,000	Greywater investigation for potential delivery of grey water to

		local industry for use in cooling water supply needs
1	\$79,000	Diversion piping to divert out-of-spec water to pond 3C
2	\$836,000	Electrical upgrades for pretreatment equipment needs (HRGreen report implementation)
3	\$967,000	Treatment pond 2 and clarifier upgrades (HRGreen report implementation)
4	\$913,000	Upgrade treatment pond 2
	\$180,000	Emergency sanitary sewer diversion
5	\$20,000	Retainer for Wastewater Engineering Consultant
	\$429,000	Wastewater Engineering fee
6	\$173,000	Groundwater Evaluation pursuant to Board Order
7	\$113,457	Biotube sludge hauling

8 See Defendant Exhibits: 697-701, 725-753; 754-763; 702; 693-694; 765-785; 695-696; 787;
9 786; 692; 789-791; 792; 793-795; 796; 2; 797-799; 653; 800-804; 805-806; 807-812; 813.

10 The \$17,306,000 expenditure does not include the dedication of National Beef engineers and
11 personnel who spent a significant amount of time working to achieve wastewater compliance.
12 National Beef worked collaboratively with the City and the Regional Board to address the
13 compliance challenges and the City's obligation to provide wastewater services in accordance
14 with its contractual obligations and its own ordinance. See Defendant Exhibits 16 and 988.

15 A more accurate representation is of a company that spent \$17,306,000 and invested significant
16 professional time to meet the City's ordinance requirements. Despite National Beef's
17 significant efforts to meet the City ordinance requirements, the City still failed to fulfill its
18 obligations and meet its discharge permit requirements. On numerous occasions when I or
19 other National Beef representatives met with Regional Board staff, the Regional Board
20 expressed a positive opinion regarding the steps that National Beef was taking to improve
21 wastewater pretreatment and meet ordinance limits. The Regional Board never informed
22 National Beef that it was not taking adequate measures to address wastewater treatment. After
23 National Beef announced the planned closing of the Brawley plant, the Board participated with
24 other public and private groups to discuss cost-cutting measures that could potentially allow the
25 plant to remain in operation. At no time during those discussions did the Regional Board hint

1 that National Beef's continued operations would be dependent upon further wastewater
2 pretreatment system improvements.

3 3. The Regional Board asserts that National Beef should have implemented the
4 recommendations of the April 2013 HR Green Preliminary Engineering Report upon
5 purchase of the plant in June 2006. Is this correct?

6 National Beef's substantial investments in pretreatment systems and operations yielded
7 discharges that complied with the City local limits a majority of the time. The April 2013 HR
8 Green Preliminary Engineering Report was commissioned in response to the City's request for
9 a preliminary engineering report as part of the City's imminent submittal of its pretreatment
10 program to the Regional Board for formal approval. See Defendant Exhibit 965. In its letter
11 request, the City continued to cite the respective BOD, TSS, and ammonia limits of 250 mg/l,
12 250 mg/l and 30 mg/l, respectively, that National Beef continually relied upon. The HR Green
13 recommendations were based upon evaluation of the pretreatment system National Beef had
14 created through substantial investments over the years 2006 through 2012. The resulting
15 recommendations were looking forward from the existing system to development of additional
16 pretreatment system improvements to make the systems as a whole more robust and more
17 reliable, ensuring consistent compliance with the City ordinance limits. The HR Green
18 recommendations were not needed to achieve basic compliance with the City ordinance limits.
19 This is evidenced by data depicting performance of the pretreatment system from mid-January
20 2013 through May 2013.

21 I have reviewed Attachment M to the Civil Administrative Liability Complaint in this matter
22 and note that the four Compliance Actions listed in the table in that Attachment resemble
23 elements of the HR Green Report. Attachment M appears to suggest that these four elements
24 should have been implemented June 2, 2006. As I state above, the HR Green Preliminary
25 Engineering Report was commissioned in response to a City of Brawley request to National
26 Beef in 2012 for an evaluation of the National Beef pretreatment system, not for a retrospective

1 look at what the National Beef pretreatment system may have included in 2006 or how it may
2 have functioned in 2006. In short, National Beef did not ask HR Green to engage in a forensic
3 study of the National Beef 2006 wastewater pretreatment system and HR Green did not do so.
4 The first Compliance Action on Attachment M suggests that National Beef avoided
5 construction of a replacement pond for anaerobic pond 1. The anaerobic lagoon in the National
6 Beef pretreatment system operated as a highly effective anaerobic lagoon but began to exhibit
7 concerning characteristics in June 2012. National Beef did not need a new anaerobic lagoon in
8 2006.
9 Attachment M states "avoided installation of aerobic treatment systems in pond 2." The list of
10 capital expenses above details that aeration in pond 2 had been a concern of National Beef's
11 prior to the HR Green study. Attachment M suggests that additional aeration should have been
12 installed in June 2006 or at any time National Beef operated the facility. National Beef, in fact,
13 began installing additional aeration in 2007.
14 Attachment M states "avoided construction of temporary pond 3c" and "avoided installation of
15 clarifier." Pond 3 was comprised of three compartments. Ponds 3a and 3b functioned as
16 clarifiers. Pond 3c functioned to collect diverted out-of-spec wastewater. The clarifiers that
17 were being considered for installation and the temporary improvements to pond 3c
18 recommended in the HR Green report were intended to make the pretreatment system more
19 robust and perform more consistently. Performance data from the National Beef discharge to
20 the City beginning January 2013 demonstrate that the pretreatment system was functioning
21 properly, including clarifying ponds 3a and 3b. The HR Green recommendations regarding
22 pond 3c and the installation of conventional clarifiers were intended to make the National Beef
23 pretreatment system more robust and more reliable.

Dated September 18, 2014

By: William A. Ludwig, Jr.
William A. "Bud" Ludwig, Jr.

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ATTACHMENT A
to
TESTIMONY OF WILLIAM A. 'BUD' LUDWIG, JR.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1	National Beef California, LP														
2	Brawley, CA														
3	Monthly Wastewater Charges per Constituent														
4															
5		January-09	February-09	March-09	April-09	May-09	June-09	July-09	August-09	September-09	October-09	November-09	December-09	Avg for 2009	Total for 2009
6	Biochemical Oxygen Demand (BOD)	\$ 813.15	\$ 1,365.41	\$ 1,543.47	\$ 1,437.83	\$ 1,430.57	\$ 1,272.06	\$ 1,728.81	\$ 1,906.76	\$ 1,222.96	\$ 2,074.49	\$ 832.95	\$ 2,325.26	\$ 1,496.14	\$ 17,953.72
7	Total Suspended Solids (TSS)	\$ 35,210.99	\$ 27,625.64	\$ 11,813.32	\$ 21,773.14	\$ 30,666.29	\$ 44,155.63	\$ 33,341.49	\$ 49,094.83	\$ 5,701.66	\$ 4,020.47	\$ 3,739.12	\$ 27,502.32	\$ 24,553.74	\$ 294,644.90
8	Ammonia (NH ₃)	\$ 703.46	\$ 648.27	\$ 589.72	\$ 778.20	\$ 700.38	\$ 727.77	\$ 522.11	\$ 985.36	\$ 920.82	\$ 1,125.56	\$ 410.81	\$ 917.34	\$ 745.82	\$ 8,949.80
9	Fines	\$ 8,000.00	\$ 4,000.00	\$ 8,000.00	\$ 8,000.00	\$ 2,000.00	\$ 6,000.00	\$ 10,000.00	\$ -	\$ -	\$ -	\$ 5,000.00	\$ 30,000.00	\$ 6,750.00	\$ 81,000.00
10	Totals	\$ 44,727.60	\$ 33,639.33	\$ 21,946.51	\$ 31,989.17	\$ 34,797.24	\$ 52,155.46	\$ 45,592.42	\$ 51,906.95	\$ 7,845.43	\$ 7,220.52	\$ 9,982.87	\$ 60,744.92	\$ -	\$ 402,548.42
11															
12															
13		January-10	February-10	March-10	April-10	May-10	June-10	July-10	August-10	September-10	October-10	November-10	December-10	Avg for 2010	Total for 2010
14	Biochemical Oxygen Demand (BOD)	\$ 9,943.69	\$ 3,906.62	\$ 5,791.92	\$ 1,568.37	\$ 2,905.22	\$ 4,322.51	\$ 8,011.78	\$ 15,851.22	\$ 4,915.34	\$ 5,882.43	\$ 5,029.83	\$ 5,088.15	\$ 6,101.42	\$ 73,217.08
15	Total Suspended Solids (TSS)	\$ 111,722.81	\$ 63,885.91	\$ 39,875.10	\$ 1,825.58	\$ 2,536.68	\$ 2,004.06	\$ 36,140.76	\$ 70,083.03	\$ 11,632.42	\$ 8,440.25	\$ 5,177.51	\$ 14,661.59	\$ 30,665.47	\$ 367,985.68
16	Ammonia (NH ₃)	\$ 1,431.32	\$ 1,031.54	\$ 1,672.27	\$ 2,543.78	\$ 2,936.22	\$ 2,277.03	\$ 7,613.79	\$ 5,924.28	\$ 3,165.61	\$ 2,702.75	\$ 3,588.22	\$ 1,626.51	\$ 3,042.78	\$ 36,513.32
17	Fines	\$ 15,000.00	\$ 10,000.00	\$ -	\$ -	\$ -	\$ 40,000.00	\$ 50,000.00	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 45,000.00	\$ 14,166.67	\$ 170,000.00
18	Totals	\$ 138,097.82	\$ 78,824.06	\$ 47,339.28	\$ 5,937.72	\$ 8,378.12	\$ 48,603.60	\$ 101,766.34	\$ 96,858.53	\$ 19,713.37	\$ 17,025.43	\$ 18,795.56	\$ 66,376.25	\$ -	\$ 647,716.08
19															
20															
21		January-11	February-11	March-11	April-11	May-11	June-11	July-11	August-11	September-11	October-11	November-11	December-11	Avg for 2011	Total for 2011
22	Biochemical Oxygen Demand (BOD)	\$ 11,116.94	\$ 19,549.29	\$ 26,433.36	\$ 26,878.54	\$ 15,116.05	\$ 2,448.96	\$ 2,687.92	\$ 2,970.36	\$ 3,054.40	\$ 7,424.21	\$ 6,014.08	\$ 13,106.29	\$ 11,400.03	\$ 136,800.40
23	Total Suspended Solids (TSS)	\$ 30,756.72	\$ 291,948.59	\$ 205,725.71	\$ 273,835.47	\$ 16,363.01	\$ 2,701.63	\$ 2,183.33	\$ 2,863.09	\$ 3,877.80	\$ 11,898.51	\$ 8,286.53	\$ 8,823.18	\$ 71,605.30	\$ 859,263.57
24	Ammonia (NH ₃)	\$ 5,315.63	\$ 5,419.99	\$ 6,695.02	\$ 9,331.59	\$ 17,857.95	\$ 8,901.24	\$ 6,118.42	\$ 5,778.54	\$ 6,383.85	\$ 10,261.49	\$ 850.14	\$ 7,268.71	\$ 7,515.21	\$ 90,182.56
25	Fines	\$ 50,000.00	\$ 60,000.00	\$ 60,000.00	\$ 30,000.00	\$ 25,000.00	\$ 30,000.00	\$ -	\$ -	\$ -	\$ -	\$ 5,000.00	\$ -	\$ 21,666.67	\$ 260,000.00
26	Totals	\$ 97,189.29	\$ 376,917.87	\$ 298,854.09	\$ 340,045.60	\$ 74,337.01	\$ 44,051.83	\$ 10,989.67	\$ 11,611.99	\$ 13,316.05	\$ 29,584.21	\$ 15,150.75	\$ 34,198.18	\$ -	\$ 1,346,246.53
27															
28															
29		January-12	February-12	March-12	April-12	May-12	June-12	July-12	August-12	September-12	October-12	November-12	December-12	Avg for 2012	Total for 2012
30	Biochemical Oxygen Demand (BOD)	\$ 14,298.83	\$ 4,694.44	\$ 4,718.76	\$ 5,956.22	\$ 9,421.38	\$ 10,289.90	\$ 8,284.65	\$ 12,797.21	\$ 8,923.12	\$ 7,982.06	\$ 14,509.53	\$ 18,398.01	\$ 10,022.83	\$ 120,273.91
31	Total Suspended Solids (TSS)	\$ 12,228.45	\$ 10,565.37	\$ 10,189.49	\$ 9,969.44	\$ 9,931.45	\$ 9,157.43	\$ 14,418.25	\$ 22,701.70	\$ 12,977.63	\$ 9,672.36	\$ 65,955.88	\$ 19,499.62	\$ 17,272.34	\$ 207,268.07
32	Ammonia (NH ₃)	\$ 10,862.82	\$ 9,669.86	\$ 7,119.81	\$ 7,944.47	\$ 9,130.56	\$ 16,226.33	\$ 18,983.51	\$ 15,257.31	\$ 16,406.29	\$ 18,473.07	\$ 5,178.00	\$ 7,079.78	\$ 11,860.99	\$ 142,331.83
33	Fines	\$ 20,000.00	\$ 5,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00	\$ 25,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 5,000.00	\$ 15,000.00	\$ 180,000.00
34	Totals	\$ 57,391.10	\$ 29,929.67	\$ 32,028.06	\$ 28,870.15	\$ 33,483.39	\$ 60,673.66	\$ 61,686.41	\$ 75,756.22	\$ 58,207.04	\$ 56,127.49	\$ 105,643.21	\$ 49,977.41	\$ -	\$ 649,873.81
35	Flow	47,973,109	49,321,561	44,588,245	51,572,452	51,020,997	51,014,498	49,293,492	46,477,836	40,186,624	48,209,312	45,396,943	47,870,033	47,743,759	
36	Avg Daily Flow	1,547,520	1,591,018	1,415,689	1,663,627	1,700,700	1,645,629	1,643,116	1,499,285	1,296,343	1,606,977	1,464,418	1,595,668	1,555,832	
37	Unit Cost for Flow	\$ 0.0480	\$ 0.0480	\$ 0.0480	\$ 0.0480	\$ 0.0480	\$ 0.0480	\$ 0.0480	\$ 0.0480	\$ 0.0565	\$ 0.0565	\$ 0.0565	\$ 0.0565	\$ 0.0565	
38	Total Cost for Flow	\$74,319.00	\$76,408.00	\$67,987.87	\$79,895.04	\$81,675.42	\$79,030.66	\$78,910.00	\$72,002.56	\$73,242.75	\$90,793.44	\$82,738.89	\$90,154.47	\$78,929.84	
39															
40		January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13	November-13	December-13	Avg for 2013	Total for 2013
41	Biochemical Oxygen Demand (BOD)	\$ 6,210.48	\$ 17,156.66	\$ 8,599.60	\$ 3,554.35	\$ 7,733.78	\$ 5,619.13	\$ 7,337.90	\$ 2,965.00	\$ 2,694.27	\$ 1,730.61	\$ 3,099.38	\$ 3,946.21	\$ 5,887.28	\$ 70,647.37
42	Total Suspended Solids (TSS)	\$ 23,608.13	\$ 24,409.41	\$ 11,116.59	\$ 6,868.61	\$ 10,860.14	\$ 6,318.88	\$ 6,865.04	\$ 3,778.24	\$ 5,027.75	\$ 2,968.51	\$ 4,610.38	\$ 6,427.85	\$ 9,404.96	\$ 112,859.53
43	Ammonia (NH ₃)	\$ 2,575.57	\$ 5,084.15	\$ 491.66	\$ 471.26	\$ 527.84	\$ 3,612.32	\$ 5,554.06	\$ 3,354.37	\$ 3,451.05	\$ 1,357.61	\$ 280.70	\$ 915.01	\$ 2,306.50	\$ 27,675.60
44	Fines	\$ 5,000.00	\$ -	\$ -	\$ -	\$ -	\$ 5,000.00	\$ 5,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,363.64	\$ 15,000.00
45	Totals	\$ 37,394.18	\$ 46,650.22	\$ 20,207.85	\$ 10,894.22	\$ 19,121.76	\$ 20,550.33	\$ 24,757.00	\$ 10,897.61	\$ 11,173.07	\$ 6,056.73	\$ 7,990.46	\$ 11,289.07	\$ -	\$ 226,182.50
46	Flow	41,083,552	43,541,992	35,513,816	37,943,832	39,258,728	43,142,976	42,524,224	44,739,392	49,765,440	40,186,368	41,189,312	46,903,064	47,743,759	
47	Avg Daily Flow	1,325,276	1,404,580	1,268,351	1,223,995	1,308,624	1,391,709	1,417,474	1,443,206	1,605,337	1,339,546	1,328,687	1,563,435	1,555,832	
48	Unit Cost for Flow	\$0.0565	\$0.0565	\$0.0565	\$0.0565	\$0.0565	\$0.0565	\$0.0565	\$0.0565	\$0.0616	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	
49	Total Cost for Flow	\$74,877.46	\$79,358.12	\$77,661.20	\$69,155.11	\$73,936.65	\$78,630.89	\$80,086.61	\$81,540.46	\$98,863.83	\$82,495.22	\$81,826.53	\$96,283.36	\$78,929.84	
50															
51		January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14	September-14	October-14	November-14	December-14	Avg for 2014	Total for 2014
52	Biochemical Oxygen Demand (BOD)	\$ 10,618.57	\$ 8,148.53	\$ 3,722.35	\$ 3,526.72	\$ 1,727.62	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,548.76	\$ 27,743.79
53	Total Suspended Solids (TSS)	\$ 10,363.59	\$ 6,647.95	\$ 3,405.01	\$ 9,586.08	\$ 3,836.68	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,767.86	\$ 33,839.31
54	Ammonia (NH ₃)	\$ 551.24	\$ 2,236.62	\$ 219.64	\$ 309.96	\$ 252.89	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 714.07	\$ 3,570.35
55	Fines	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
56	Totals	\$ 21,533.40	\$ 17,033.10	\$ 7,347.00	\$ 13,422.76	\$ 5,817.19	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 65,153.45
57	Flow	40,718,532	43,360,548	38,467,160	51,781,032	47,454,976	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
58	Avg Daily Flow	1,313,501	1,398,727	1,373,827	1,670,356	1,581,833	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
59	Unit Cost for Flow	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	\$0.06158448	
60	Total Cost for Flow	\$80,891.28	\$86,139.90	\$84,606.43	\$102,868.00	\$97,416.34	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

ATTACHMENT B

to

TESTIMONY OF WILLIAM A. 'BUD' LUDWIG, JR.

Evans, Parthy

From: Hancock, Nadine
Sent: Thursday, July 13, 2006 4:08 PM
To: 'Dennis Morita dmorita@hkcf-law.com'
Subject: From Parthy Evans
Attachments: Draft Pretreatment Discharge Authorization for City of Brawley Letterhead.DOC; Letter to Dennis Morita re water treatment system - 7-13-06.DOC

If you have any difficulty with the attachments, please contact the undersigned.

Nadine Hancock
Legal Secretary
Stinson Morrison Hecker LLP
1201 Walnut
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816/691-3197
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nhancock@stinsonmoheck.com



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Fax (888) 571-0935

July 13, 2006

Dennis H. Morita, Esq.
Horton, Knox, Carter & Foote
Law Building
895 Broadway
El Centro, CA 92243

Re: National Beef California, LP – Authorization to Discharge to
City of Brawley Sewer System

Dear Dennis:

This letter is in followup to our conversation in June regarding discharge of pretreated wastewater from the National Beef California plant to the City of Brawley sewer system. I addressed during that conversation the need for National Beef to obtain from the City a letter or permit authorizing those discharges. I have prepared for your review and our discussion the attached draft letter from the City to National that would serve to authorize the discharges.

The following bullet points present a brief background for the need to obtain an authorization:

- The National Beef plant is a "significant industrial user" pursuant to EPA regulations at 40 CFR 403.3(t) because it discharges an average of 25,000 gpd or more process wastewater to a Publicly Owned Treatment Works (POTW) or alternatively because the plant contributes more than 5% of the dry weather hydraulic flow to the POTW.
- POTWs with a total design flow of 5 MGD or more are required to have pretreatment programs. In addition, the state may require that a POTW with less than a 5 MGD design flow develop a pretreatment program. The City has a design flow of something on the order of 3.9 MGD and, thus, does not trigger the pretreatment program requirement through the design flow threshold. However, as discussed below, the state has imposed some pretreatment program requirements on the City and the City has a pretreatment Ordinance.
- POTW pretreatment program requirements include a requirement to control wastewater discharges to the sewer system from significant industrial users

KANSAS CITY
OVERLAND PARK
WICHITA
WASHINGTON, D.C.
PHOENIX
ST. LOUIS
OMAHA
JEFFERSON CITY

NBC-DEF 000096

through permits or equivalent individual control mechanisms. EPA regulations and guidelines prescribe the conditions that such control mechanisms must include.

- The City's June 28, 2000 discharge permit required the City to have a pretreatment program and the discharge permit made the then existing City pretreatment program "an enforceable condition" of the permit.
- The City has a November 20, 2001 Wastewater Pretreatment Ordinance, enacted after the June 28, 2000 permit was issued. I do not have any documentation that the 2001 ordinance was submitted to or approved by the state.
- The City's current discharge permit, effective June 29, 2005, has different pretreatment program requirements. The current permit does not require that Brawley have a pretreatment program *per se*. Rather, the current permit requires "in the event that there are industrial wastes subject to regulation under the NPDES Pretreatment Program" or the state requires pretreatment requirements, Brawley must notify the state of such discharges and must submit a pretreatment program for the state's review not more than one year after Brawley provides the notice. This permit provision is ambiguous and is not entirely consistent with the EPA regulatory scheme. All industrial wastes are subject to regulation under the NPDES pretreatment program because there are national pretreatment standards (no flammables, large items, etc can be discharged to sewers) that apply to all discharges to sewers and the provision would be meaningless if interpreted in this way. The provision can have meaning only if wastes subject to NPDES pretreatment program regulation is interpreted to refer to wastes that are from a source that is subject to categorical pretreatment requirements (requirements based on the type of source, such as metal finishing). Because there are no pretreatment requirements for complex slaughterhouses, which is the category that the National Beef plant would be assigned, the City could take the position that it is not required to have a pretreatment program.
- However, the City pretreatment Ordinance requires that Significant Industrial Users obtain a discharge permit at section 22.31. Significant Industrial User is defined in the Ordinance at section 22.13 as a user that discharges an average of 25,000 gpd to the sewer, contributes 5% or more of the dry weather hydraulic or organic capacity of the POTW, or is designated as a Significant Industrial User by the City. As discussed in the first point above, National Beef is a Significant Industrial User and pursuant to the Ordinance the City is to provide a permit to National Beef for the discharges to the City sewer system.
- The City Ordinance at section 22.41 and EPA pretreatment regulations at 40 CFR section 403.8(f)(1)(iii) set forth the 5 provisions that must appear in

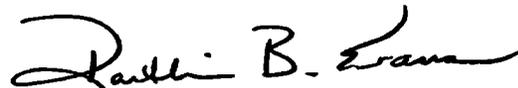
pretreatment permits or other documents to control discharges to a city sewer system.

My evaluation of the applicable law and regulations and the City Ordinance leads me to conclude that the Ordinance requires an authorization from the City to National Beef for the discharges from the National Beef plant to the sewer system. EPA regulations allow discharges to be controlled through document other a "permit." In many cases, cities use letters to satisfy the requirement for an authorization. Therefore, I have drafted for your review the attached letter of authorization. The draft contains the five provisions that must appear in such authorizations pursuant to the Ordinance and to EPA regulations. In addition to the required provisions, I have included references to the Ordinance and National Beef's obligation to comply with the ordinance.

Please review this letter and the draft so that we can discuss the City's issuance of a letter of authorization. I will be in the office July 21, briefly on July 24, and then gone until August 7. I would appreciate it if we could schedule a time to discuss the letter of authorization. Please let me know a time that works well in your schedule.

Very truly yours,

STINSON MORRISON HECKER LLP



Parthenia B. Evans

PBE:nh

cc: Scott H. Smith
Bud Ludwig
Ed Fitzgerald

Draft for City of Brawley Letterhead

Ed Fitzgerald, Plant Manager
National Beef California, LP
57 East Shank Rd.
Brawley, CA 92227

Re: Authorization to Discharge to City of Brawley Sewer System

Dear Mr. Fitzgerald:

This letter is to authorize National Beef California, LP ("National Beef") to discharge wastewater to the City of Brawley Sewer System in accordance with the conditions set forth in the City of Brawley Wastewater Pretreatment Ordinance adopted November 20, 2001, and amended (the "Ordinance") and the conditions set forth in this letter of authorization.

General Conditions

1. This authorization is effective as of May 30, 2006 and has a term until May 30, 2011.
2. If National Beef wishes to continue to discharge after the expiration date of this authorization, a request for reissuance of this authorization must be filed with the City a minimum of 90 days prior to the expiration date. The City may request information from National Beef in order to process a request for reissuance.
3. This authorization is not transferable without prior notification to the City in accordance with the Ordinance and provisions for furnishing the new owner or operator with a copy of the then existing authorization to discharge.
4. The National Beef facility is a complex beef slaughterhouse pursuant to definitions at 40 C.F.R. section 432.21. EPA effluent guidelines for complex slaughterhouses at 40 C.F.R. part 432, subpart B do not establish pretreatment standards. The general pretreatment standards at 40 C.F.R. Part 403, the Ordinance, and this letter establish the conditions for discharge of wastewater by National Beef to the City sewer system.
5. Compliance with the discharge conditions in the Ordinance and this letter does not relieve National Beef of its obligation to comply with any or all applicable pretreatment regulations, standards or requirements under local, state, and federal law. Noncompliance with any term or condition of the Ordinance or this letter is a violation of the Ordinance. Administrative, civil, or criminal penalties may be imposed for violation of pretreatment standards and requirements and any applicable compliance schedule pursuant to the City's authority under the Ordinance. Any schedule of compliance applicable to the National Beef discharge shall not extend the time for compliance beyond that required by applicable federal, state, or local law.

Outfall, Effluent Limitations and Monitoring Requirements

During the effective term of this authorization National Beef is authorized to discharge process wastewater to the City sewer system from the outfall discharging to the effluent port on the south side of Pond #2, located just south of the National Beef plant. Effluent from this outfall consists of pretreated wastewater from slaughtering and rendering operations.

National Beef's discharge to the City sewer system shall not exceed the following effluent limitations:

PARAMETER	DAILY MAXIMUM EFFLUENT LIMITATION in Mg/L	MONITORING REQUIREMENT
Oil and Grease	40	Weekly
Temperature – Fahrenheit	140 F	Weekly
Biological Oxygen Demand (BOD)	Monitor	Weekly
Suspended Solids (SS)	Monitor	Weekly
Ammonia Nitrogen	30	Weekly
Flow	Monitor	Daily

6. Discharge monitoring, analyses, recordkeeping, and reporting shall be done in accordance with the Ordinance.

7. National Beef shall comply with all applicable requirements of the Ordinance.

If you have any questions regarding the terms and conditions that apply to your authorized discharge to the City sewer system please contact Ruben Mireles, City Operations Manager.

Sincerely,

Oscar Rodriguez
City Manager

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

PREFILED TESTIMONY OF JAMES D.
PASKELL

PARTHENIA B. EVANS
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Attorneys for Discharger:

National Beef California, LP

1 Q. Please state your name and occupation.

2 A. My name is James Paskell. I am the Founder and President of LITIGATION AND
3 LIABILITY MANAGEMENT, LLC (“LLM”), which is a business, economic, financial and
4 damages consulting firm that provides services to individuals, businesses, and counsel across
5 the United States. I am experienced in financial, economic, damage and accounting matters
6 relevant to my work, analysis and study on this matter. During my career, I have analyzed and
7 prepared hundreds of claims for lost profits, property damage, increased costs and other
8 financial and economic damages. This includes dozens of cases involving allocation of costs
9 and analysis of compliance and related economic benefits in environmental matters throughout
10 California and the United States. My curriculum vitae is attached as **Defendant Exhibit 993**.

11 Q. Describe your educational background.

12 A. I graduated from the University of California, Los Angeles in 1990 with a Bachelor of Arts
13 degree in Economics and Political Science. In addition, I have received ongoing professional
14 training throughout my career in the areas of accounting, finance, economics and other specific
15 subject matters.

16 Q. Describe your professional experience.

17 A. Before founding LLM in 2008, I was a Director in the San Francisco office of NAVIGANT
18 CONSULTING, INC., an international consulting company with approximately 1,800
19 professionals and thirty-seven offices throughout the United States, Canada, Europe and China.
20 While at Navigant I led a number of engagements for clients involving environmental,
21 insurance and other litigation and regulatory disputes. Prior to joining NAVIGANT
22 CONSULTING in July of 2004, I was employed by DELOITTE AND TOUCHE LLP, an
23 international public accounting and consulting firm, where I was a Senior Manager and
24 provided consulting to clients on a variety of accounting, regulatory and commercial matters.
25 Prior to joining DELOITTE AND TOUCHE in July of 2002, I was employed by PETERSON
26 CONSULTING, an international consulting firm, starting in 1990. Through a series of
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1 transactions, PETERSON CONSULTING was acquired and became NAVIGANT
2 CONSULTING in 1996. I held various positions at PETERSON CONSULTING and
3 NAVIGANT CONSULTING, the last position being Principal, and performed various
4 analytical and litigation consulting services for companies in a variety of industries.

5 Q. What were you asked to do in this matter?

6 A. I have been asked by counsel for National Beef California, LP (“National Beef”) to review
7 the Benefit of Non-Compliance calculation as found in Attachment M of *Administrative Civil*
8 *Liability Complaint R7-2014-0041* (“Attachment M”) and opine on the appropriateness and
9 validity of both the methodology and related inputs employed to calculate the purported Benefit
10 of Non-Compliance.

11 Q. What did you do to accomplish this task?

12 A. To perform this analysis, I reviewed various National Beef accounting and engineering
13 documents. This included, among other things, National Beef’s capital and Operations and
14 Maintenance (“O&M”) expenditures related to wastewater from 2006 to 2012, as well as cost
15 estimates associated with the wastewater plant improvements proposal prepared in 2013 for
16 National Beef by HR Green, Inc. (“HR Green”). I also interviewed various National Beef
17 personnel, including Bud Ludwig, National Beef’s Corporate Environmental Director. Finally,
18 I reviewed the calculation and related documentation pertaining to the purported Benefit of
19 Non-Compliance, including the *Administrative Civil Liability Complaint R7-2014-0041*, the
20 deposition of Jose Angel, and the BEN Model User’s Manual (*BEN: A Model to Calculate the*
21 *Economic Benefits of Noncompliance; Users Manual*, Revised December 1993; hereinafter
22 “BEN Model User’s Manual”).

23 Q. What is the BEN model?

24 A. The BEN model is a computerized financial model designed to calculate “the economic
25 benefit a violator derives from delaying or avoiding compliance with environmental statutes.
26 In general, the Agency uses the BEN computer model to assist its own staff in developing
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1 settlement penalty figures.” (BEN Model User’s Manual, p. 1-1) To this end, EPA staff can
2 input a series of economic and company-specific variables into the model and the model will
3 calculate a purported economic benefit, generally in the form of the after-tax net present value
4 of any delayed or avoided costs related to compliance. As I will discuss in further detail below,
5 the accuracy of the calculation is only as good as the accuracy and appropriateness of the
6 variables input into the BEN model.

7 Q. Did the California Regional Water Quality Control Board - Colorado River Basin Region
8 (“CRWQCB”) properly use the BEN model with respect to National Beef?

9 A. No. The BEN model and the related inputs utilized by CRWQCB with respect to National
10 Beef do not appropriately reflect the facts and circumstances of National Beef’s case, nor do
11 they properly calculate the alleged economic benefit derived by National Beef.

12 As noted above, the EPA developed the BEN model “to calculate the economic benefit a
13 violator derives from delaying or avoiding compliance with environmental statutes” (Ben
14 Model User’s Manual, p.1-1). However, based on discussions with company personnel, it is
15 my understanding that National Beef’s wastewater treatment facilities were in fact in
16 compliance with the National Pre-Treatment Standards of 40 CFR Section 403.5 (hereinafter
17 “compliance”) a significant amount of the time. National Beef alleges that each time
18 discharges exceeded compliance levels, the company implemented pollution control measures,
19 each time reducing discharges and quickly achieving compliance. As support for these
20 allegations, the company has produced charts summarizing discharges compared to the
21 compliance limit, as well as a summary of related environmental expenditures incurred during
22 the period in question in order to achieve compliance for the pollution control measures
23 outlined in Attachment M. According to the chart and the testimony of company personnel,
24 when these measures were implemented, they successfully reduced discharges below the
25 compliance limits. Those measures required significant capital outlays and related O&M
26 expenditures; according to the company, those expenditures approach \$12M from 2006 through
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1 2012. This fact pattern does not reconcile with the CRWQCB's analysis, which assumes non-
2 compliance since the inception of operations at Brawley, and calculates an approximate \$12M
3 economic "benefit" to the company. These facts call into question the validity of performing a
4 BEN calculation at all -- the BEN model assumes a company is out of compliance, and as a
5 result avoided or delayed pollution control costs; National Beef has done neither.

6 Q. In What Ways is the CRWQCB's Analysis Not Credible?

7 A. Like any financial model or benefit/damages calculation, outputs from the BEN model are
8 only as valid as the inputs. The BEN Model User's Manual acknowledges this fact:

9 *"While BEN's structure and basic financial assumptions are given and fixed, its input*
10 *variables (such as costs and compliance dates) are often subject to your judgment. For*
11 *instance, your analysis of the facts might change as new information is supplied by the*
12 *violator, changing the BEN calculation accordingly...it is important to think through the*
13 *basis for these various inputs...In general, benefit calculations for trial or hearing*
14 *before an ALJ should be presented by a financial expert"*(Ben Model User's Manual, p.
15 6-1).
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17 It does not appear that this guidance was followed by CRWQCB in this matter. It is my
18 understanding that the basis for the CRWQCB's calculations were provided by Mr. Jose Angel,
19 Assistant Executive Officer for the CRWQCB. I further understand the Mr. Angel was
20 supported in his analysis by Jerry Horner, who is an economist with the State Water Resources
21 Control Board. I note that neither Mr. Angel nor Mr. Horner are independent financial experts.
22 With respect to choosing appropriate cost inputs, the BEN Model User's Manual provides the
23 following guidance:

24 *"In order to determine the cost inputs needed to run the BEN model, you must have a*
25 *defensible theory of on-time compliance (i.e. knowledge of the pollution control systems*
26 *or measures the violator should have installed and operated earlier to have prevented*
27 *the violations at issue in the case)"* (Ben Model User's Manual, p.6-2).
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1 However, contrary to this guidance, it appears that Mr. Angel has utilized as the sole basis for
2 his cost inputs a proposal prepared in 2013 by HR Green, Inc. (“HR Green”), a consultant
3 retained by National Beef. However, per the affidavit of Andrew Marsh, a registered
4 professional engineer with HR Greene who assisted in the preparation of that proposal, the
5 proposed tasks and expenditures outlined in that proposal were “irrelevant to the National Beef
6 industrial wastewater treatment system as it existed on June 2, 2006...”(*Affidavit of Andrew
7 Marsh in Support of Submission of National Beef California, LP*, September 16, 2014), Mr.
8 Marsh basically indicates in his affidavit that it would be inappropriate to use that prospective
9 proposal to retrospectively assume the “measures the violator should have installed and
10 operated earlier to have prevented the violations at issue.”

11 The BEN Model Users Manual does state that “The best evidence of what the violator should
12 have done to prevent the violations is what it eventually does (or will do) to achieve
13 compliance” (Ben Model User’s Manual, p. 6-2). This appears to be the basis for Mr. Angel’s
14 use of the HR Green report to calculate avoided costs. However, based on the affidavit of Mr.
15 Marsh, and discussions with National Beef personnel, it is my understanding that the HR Green
16 report was not, and was never meant to be, construed as a summary of what the company “will
17 do to achieve compliance” in 2006.

18
19 In fact it is my understanding, based on discussions with the company, that the HR Green
20 report was commissioned at the direction of the City of Brawley, not the CRWQCB or EPA,
21 and that compliance was not the sole purpose of the report. Per Bud Ludwig, the report also
22 included tasks and related costs to allow expanded production capacity at the plant and to
23 generally make it more reliable and robust. It is my further understanding that certain of the
24 proposed expenditures were to install long term replacements for compliance systems that were
25 already in place and working. So in addition to using a prospective report and applying it
26 retrospectively, CRWQCB used a report related to non-compliance expenditures as its
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1 “defensible theory” for “measures the violator should have installed and operated earlier to
2 have prevented the violations at issue.”

3 Even if one were to assume National Beef was not in compliance, CWRQB had better
4 information available to indicate “what it [National Beef] eventually does (or will do) to
5 achieve compliance.” In fact, as indicated above, National Beef incurred significant expenses
6 to achieve compliance. This is a more reasonable assumption for what National Beef “does or
7 will do” than a prospective proposal containing non-compliance costs. However, the
8 CRWQCB analysis ignores this information entirely. At a minimum, the CRWQCB analysis
9 must provide a credit for the expenditures National Beef actually incurred in order to bring the
10 wastewater plant into compliance. In addition, the CRWQCB utilized other incorrect inputs
11 and assumptions in its BEN Model calculation (see pages 9-11 below). Again, these facts call
12 into question the validity of a BEN calculation in this situation, and/or whether National Beef
13 actually realized any economic benefit in this matter.

14 Q. What expenditures did National Beef make to achieve compliance in the 2006 to 2012 time
15 period, and how should they be accounted for in the BEN Model?

16 A. National Beef made significant capital and O&M expenditures in this time period to both
17 maintain compliance, and to bring the plant back into compliance when necessary. Through
18 discussions with National Beef financial and engineering personnel, as well as review of
19 company records and documents, I have identified up to approximately \$1.8 million in
20 wastewater O&M spending, and \$10.3 million in wastewater capital expenditures through 2012
21 (See **Defendant Exhibits 995 and 996**).

22 This fact renders the BEN model inapplicable to this matter. The BEN model is based on the
23 premise that a company saves money by not investing in pollution control measures.

24
25 *“This concept of alternative investment – that is, the amount the violator would*
26 *normally expect to make by not investing in pollution control – is the basis for*
27 *calculating the economic benefit of noncompliance.”*

1 *“If the Agency is going to present economic benefit testimony at trial or in an*
2 *administrative hearing, the Agency will generally rely on an expert to provide an*
3 *independent financial analysis of the economic benefit the firm has obtained as a result*
4 *of its violations. This independent financial analysis, while consistent with the*
5 *principles of the BEN model, may not necessarily be identical to that set forth in the*
6 *BEN User’s Manual. (Ben Model User’s Manual, 1-2)*

7 However, the CRWQCB did not take any of these expenditures into account. If these were
8 accounted for by Mr. Angel in his analysis, the benefit would be significantly reduced.

9 Q. Did the California Regional Water Quality Control Board (“CRWQCB”) use a proper basis
10 for their calculation of National Beef’s purported economic benefits as calculated in
11 Attachment M?

12 A. No. As noted above, outputs from the BEN model are only as valid as the inputs. As
13 indicated in the BEN Model Users Manual:

14 *...input variables (such as costs and compliance dates) are often subject to your*
15 *judgment. For instance, your analysis of the facts might change as new information is*
16 *supplied by the violator, changing the BEN calculation accordingly...it is important to*
17 *think through the basis for these various inputs... (Ben Model User’s Manual, p. 6-1)*

18 However, as noted above, the CRWQCB made several errors in selecting inputs for the model,
19 as follows:

- 20
- 21 a) First, as noted above, CRWQCB completely ignored the significant expenditures
22 incurred by National Beef to achieve compliance at the Brawley plant. Any analysis of
23 economic benefits has to provide an offset or credit for actual expenditures made;
24 CRWQB has not done so.
 - 25 b) Second, and also as noted above, CRWQB utilized a report that was not an appropriate
26 estimate of the tasks and related costs required to achieve compliance at Brawley.
27 Sound financial analysis requires a detailed review of the proposed expenditures to
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1 ensure that they are a) accurate and b) relevant and related to the issue at hand.

2 However, Mr. Angel utilized a consultant's proposal and incorrectly assumed all
3 expenditures were necessary to achieve compliance, as follows:

- 4 i. While some of the costs would have, in part, assisted National Beef with
5 compliance issues, the report also included significant costs to allow expanded
6 production capacity at the plant and make other operational improvements. By
7 classifying plant capacity, production, and other unrelated improvement costs as
8 compliance costs, CRWQCB inappropriately overstates the required costs to
9 achieve compliance and, therefore, the purported economic benefits.
- 10 ii. In addition, certain proposed expenditures in the HR Green report were to install
11 long-term replacements for compliance systems that were already in place and
12 successfully working. For example, National Beef already had a working clarifier
13 system in place in Pond 3; however, these costs make up two of the four
14 "compliance actions" in Attachment M: "Construction of Temporary Pond C" and
15 "Installation of Clarifier". Costs to replace functioning equipment are not
16 appropriately included as an "avoided cost" and therefore inappropriately overstate
17 the alleged economic benefit. That being the case, at the very least those two items
18 should be removed from Mr. Angel's analysis.
- 19 c) Third, the CRWQCB further exacerbated its overstatement by adding ("O&M")
20 costs of \$402,107 per year. As noted previously, these inputs should be rooted
21 in some economic or financial analysis; generally, the analyst will utilize
22 company or industry-specific historical data or some other basis to estimate
23 future costs. Here, however, Mr. Angel himself provided the O&M estimates,
24 stating "I provided him with a range what typical operation and maintenance is
25 based on the total cost of a particular improvement" (**Defendant Exhibit 709,**
26 *Deposition of Jose Angel, August 28, 2014, Volume 1, p.244, lines 13-15*).

1 There was apparently no review of industry standards or Brawley records to
2 determine the accuracy of his estimates. In addition, the O&M estimate is based
3 on Mr. Angel's assumed capital expenditures; as noted above, the capital
4 expenditures include a significant amount of inappropriate costs related to
5 operational improvements unrelated to compliance. Therefore, the O&M costs
6 likewise overstate the alleged economic benefit by a commensurate amount.

7 d) Lastly, the CRWQCB uses an inappropriate time frame in its calculations. When
8 performing financial analyses, identifying the appropriate time period for which to perform
9 the analysis is foundational to the rest of the calculation. Therefore, when performing such
10 a calculation, the analyst typically utilizes well-documented sources of data, company facts
11 and circumstances relevant to the case, or some other basis to define the relevant period of
12 analysis. However, Mr. Angel has done no such analysis. Instead, he simply states that the
13 alleged capital improvements to achieve compliance should have been spent and the
14 improvements in place and operating the same day that National Beef took over the
15 Brawley plant in June of 2006. This assumption is simply not realistic, as it does not take
16 into account the time required for planning cycles, permitting, purchasing materials, and the
17 myriad other tasks required before such a project could be undertaken. More importantly,
18 based on my discussions with the company and review of relevant data, National Beef
19 believes it was in compliance a significant portion of the time up to 2010, making Mr.
20 Angel's position more unreasonable – and potentially making the alleged period of non-
21 compliance start at the earliest in 2010.

22
23 In conclusion, each of these errors significantly overstates the alleged economic benefit
24 realized by National Beef in this matter, if such a benefit was in fact realized at all.

25 Q. Can you summarize the reasons the BEN model calculation, as proposed by the CRWQCB,
26 is not appropriate in this matter?

27 A. The CRWQCB's use of the BEN model is inappropriate for a number of reasons, including:
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- 1 **a)** The BEN model assumes a company is out of compliance, and as a result avoided or
2 delayed pollution control costs; National Beef has done neither.
- 3 i. National Beef was in compliance for a significant portion of the purported
4 period of non-compliance.
- 5 ii. National Beef neither delayed nor avoided compliance spending in the
6 purported period of non-compliance. In fact, National Beef spent
7 approximately \$1.8 million in wastewater O&M expenses and
8 approximately \$10.3 million in wastewater capital expenditures.
- 9 **b)** The CRWQCB inappropriately used a prospective proposal from 2013 as the sole
10 basis for determining the compliance efforts National Beef allegedly should have
11 undertaken in 2006 – a proposal that was irrelevant to National Beef’s 2006
12 wastewater treatment system.
- 13 **c)** The use of the BEN model and the subsequent calculation of the purported
14 economic benefit are only as good as the inputs utilized to run the model. The
15 CRWQCB analysis utilized questionable assumptions for its inputs that lacked
16 analytical rigor, and resulted in significant overstatements of the purported benefits,
17 including:
- 18 i. Failing to provide credit for costs actually incurred to achieve compliance --
19 up to \$1.8 million in O&M and \$10.3 million in capital;
- 20 ii. Classifying plant capacity and other unrelated improvement costs as
21 compliance costs, inappropriately overstating the required costs to achieve
22 compliance;
- 23 iii. Classifying costs to replace functioning equipment as “avoided costs”, again
24 inappropriately overstating the required compliance costs;
- 25 iv. Exacerbating its overstatement by including these operational costs and
26 redundant compliance costs in its inputs for O&M expenses; and
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v. Utilizing an inappropriate period of purported non-compliance.

In short, the above flaws that occur throughout the CRWQCB's application of the BEN model and subsequent economic benefit calculation make the BEN model's use in this matter inappropriate.

Dated: September 18, 2014

**LITIGATION AND LIABILITY
MANAGEMENT, LLC**

By: _____

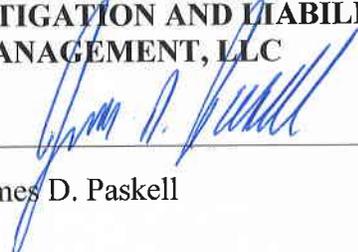

James D. Paskell

EXHIBIT 1



James D. Paskell

James D. Paskell
President

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Professional History

- Navigant Consulting, Inc. (2004 - 2008), Director
- Deloitte & Touche, LLP (2002 - 2004), Senior Manager
- Navigant Consulting, Inc. (1990 - 2002), Principal

Professional Affiliations

- American Bar Association, Associate Member (Tort Trial & Insurance, and Litigation Sections)

Education

- B.A. Economics and Political Science, University of California at Los Angeles

Jim Paskell is President and Founder of Litigation and Liability Management (LLM), LLC. LLM specializes in advising and assisting corporate clients and counsel with financial, accounting, cost and operational management of long tail contingent and other corporate liabilities for litigation and regulatory disputes, insurance claims, financial planning and reporting, transactions and other business needs. For twenty-four years, Mr. Paskell has provided economic and cost accounting analyses, project management services, and general claims consulting services on a variety of litigation, environmental, and insurance coverage matters for clients in a variety of industries across the United States. Prior to founding LLM, Mr. Paskell was a Director in the Insurance and Claims group of Navigant Consulting in San Francisco, California.

PROFESSIONAL EXPERIENCE

» Provided economic and cost accounting analyses, project management services, and general claims consulting for clients in the electric utility, oil and gas, manufacturing, insurance, transportation, waste, and other commercial industries, including assistance with dispute mediation, settlement negotiations and Federal and State Court proceedings.

» Managed numerous commercial damages cases involving accounting and economic damage issues such as lost profits, incremental profits, lost sales, mitigating costs, account reconstruction, and allocation of costs amongst multiple parties. Also performed numerous analyses and studies related to environmental and other toxic tort matters, including liability assessments, benefit modeling, operational reviews, and cost and production reconstruction and segregation studies.

» Projects have involved preparing, submitting and negotiating insurance claims for business interruption and property damage, and various third-party claims, including environmental damage, asbestos bodily injury, and multi-party product liability.

Representative Engagements

Environmental Litigation and Related Matters

- » Retained as allocation expert by the steering committees of two separate large hazardous waste landfills in California to perform allocation of site cleanup costs, as well as discovery, settlement and litigation support for cost recovery actions. Efforts included allocation of remediation costs to 20,000 parties, analytical and cost support for contribution claims against non-participating parties, analysis of “ability-to-pay” issues, development of claims for waste contribution and settlement, and tracking of claim responses and settlements. One action is on-going, while the other has resulted in the recovery of over \$100 million in site remediation costs for our client and the U.S. EPA.
- » Assisted a real estate partnership with a review and analysis of State of California and US EPA oversight and response costs at a Superfund site in California. The site is a former gold mine which was subsequently developed into residential real estate. Efforts included analysis and verification of direct costs, review of indirect cost calculations, and analysis of costs against progress billings. Also performed allocation of cost billings to responsible parties at the site based on various allocation factors, including prior agreements with the oversight agencies, geographic location of contamination, remediation volumes and percentage of site ownership. Matter was successfully settled with State and EPA.
- » Assisted a manufacturing company with liability assessment in a multi-party perchlorate contamination case in Southern California. Work included a “mass-balance” analysis of historic accounting and operating records to quantify purchase, usage and disposal of product for purposes of assessing liability. Also performed a detailed accounting analysis of historic corporate successorship to resolve alleged corporate liability. Matter was successfully settled with the State oversight agency.
- » Retained by counsel for a major oil company to assist in analysis of potential regulatory penalties related to air releases at the company’s refinery. Our work included the quantification of potential penalty amounts using the EPA “BEN Model.” Through analysis of company records and interviews of appropriate refinery personnel, we were able to calculate and verify significantly lower penalty amounts than demanded by the oversight agency. The case was resolved with a very favorable settlement for our client.
- » Performed litigation support for a large utility in a \$300 million class action toxic tort lawsuit alleging exposure to chromium from our client’s natural gas pipeline facilities. Efforts included assistance in initial case assessment and strategy, historical fact-finding and continued issue and witness support through trial.

- » Performed an independent review and analysis of environmental engineer's remediation plan and associated damages analysis for a large real estate development company in Southern California. The client owned and leased the property to an oil company and was seeking clean-up costs for the remaining oil waste in order to commercially develop the property. Efforts included a comprehensive review of the remediation plan and associated drawings and site characterizations, verification of the underlying volume and cost data, and systematic testing of the veracity of the data, underlying model assumptions, and mathematical calculations for consistency and accuracy.
- » Assisted a large multi-national manufacturing company with due diligence and liability estimation for over 100 operating and common disposal sites across the US. Our work included detailed review of engineering and cost documentation for current and planned environmental remediation activities at each site, regulatory oversight and site closure/post-closure costs for appropriateness with applicable regulations and accounting procedures, testing of total company environmental litigation liabilities and identification of all known and unknown remediation sites, and estimation of total company environmental liabilities over the next 50 years. Our work is being used by Senior Company management for strategic operating decisions and to support potential transactional solutions.

Commercial Damage Claims

- » Designated damages expert by counsel for the owner/operator of a tank farm in two related multi-party property insurance litigation matters in Federal Court in Michigan. Client suffered significant business interruption and property damage losses due to a tank rupture which released 3 million gallons of liquid asphalt into the facility. In attempting to recover the asphalt, a fire broke out at the facility. Efforts included calculation of the full extent of economic damages while working with counsel to recover from the insurer under the property policy and from other potentially liable parties through direct action and the carrier's subrogation litigation. Deposition testimony was provided and the case was successfully mediated in April 2013.
- » Retained as damages expert by a commercial insurance broker in litigation against a client alleging professional negligence in the placement of its property coverage. The client is alleging damages stemming from a flood loss that was not fully covered by its property policy. Our analysis calculated total damages for property and business interruption as well as offsets for insurance proceeds, and quantified areas of legal and measurement disagreement between the parties. A favorable settlement was reached shortly after deposition testimony was completed in February 2012. In August 2012, the opposing party (insured) retained our services to assist them in a claim against their current carrier resulting from a fire at another of its facilities.

- » Designated damages expert by counsel for a large print and binding operation in a multi-party property insurance coverage litigation in State Court in Ohio. Client suffered significant business interruption and property damage losses due to flooding caused by a pipe burst at the adjacent property. Business interruption issues in this matter were unique because the client alleged moisture infiltrated the circuitry of the client's machinery, causing many latent but persistent production delays. Litigation was filed against both the insurance carrier for coverage and the adjacent property owner for liability for the flood. Deposition testimony was completed and the case was successfully settled after trial commenced in October 2012.
- » Provided expert witness support for counsel for a machinery manufacturer in evaluating lost wages and business income for various claimants in asbestos tort matters. Our analyses included calculation of lost income from historical wages or, in the case of one multi-million-dollar income plaintiff, long-term business income, through a compensatory loss model. In addition, we advised counsel on potential settlement values based on verdicts in similar cases with similar characteristics. Client was able to quickly settle these matters on favorable terms.
- » Retained by a large investor-owned utility to analyze damages in a large breach of contract dispute. Plaintiffs alleged lost profits related to the curtailment of energy purchases by the utility. Our work included a detailed analysis of the utility's operational procedures and history, a gap analysis of the actual operating history and curtailment decisions, calculation of damages, and direct support for expert witness testimony at deposition and trial.
- » Retained by counsel for a large aerospace contractor to provide discovery and trial support for a commercial litigation. Plaintiffs sought \$500 million in damages, alleging breach of contract, fraud, and engineering and design negligence in the conversion of 10 passenger aircraft to a cargo configuration. Supported defendant's expert analysis and testimony with analytical document databases of design and fabrication specifications, change orders, compliance checks, and other engineering documents to support counsel and subject matter experts for deposition and trial. The jury returned a unanimous defense verdict for our client, awarding no damages.

Insurance Coverage – Property and Liability

- » Have successfully negotiated and resolved several property damage and/or business interruption claims resulting from various causes, including mechanical failure, flood, fire, storm, power interruption, and employee theft. In most, was asked to prepare claim calculation after the insured submitted its claim to the insurer. In each, our analysis uncovered analytical flaws in both the insured and insurer calculations which, once addressed, resulted in successful resolution without litigation. Currently retained on several similar claim matters.

- » Retained by a multi-million dollar manufacturer of building supplies in two first-party claims against its insurer. Client suffered several million dollars of business interruption and property damage losses due to a “breakout” of molten glass in its furnaces at two separate facilities. Insurer denied coverage in both claims based on, among other things, exclusions for faulty workmanship. Assisted client and counsel in developing and submitting insurance claim for business interruption, extra expense and property damage for direct and ensuing losses as well as preparing for litigation against various third parties. Our analysis was used to successfully settle claims without litigation.
- » Retained by a national provider of telecommunications and data services to provide insurance consulting services and expert testimony as a result of two separate outages at their main data hub, each of which caused several million dollars of business interruption and property damage losses. In addition to preparing and submitting the insurance claim, we are working with counsel to negotiate settlement with the insurer and then potentially join with the insurer in a joint action against the parties potentially liable for the outages. Matter is currently in arbitration.
- » Assisted a national real estate development company with the calculation and preparation of its property damage, extra expense, and business interruption claim stemming from Hurricane Ike. The claim involved several million dollars of damage to an apartment complex and associated loss of rental income. Client was able to repair the property and recapture rental income sooner than other affected properties in the area while also obtaining a favorable outcome on its business interruption claim. In addition, a significant disagreement regarding the calculation of property deductible was resolved favorably for our client and our consulting fees were recovered in full under the terms of the policy.
- » Assisted seven companies in quantifying business interruption, contingent business interruption losses, and extra expenses resulting from damages caused by Hurricane Katrina on the Gulf Coast. Work included analyzing proximate and extended economic losses caused by the storm and subsequent events, allocating costs to coverage based on terms and conditions in the policies, preparing and submitting claims to insurers, and directing negotiations with the insurers and their adjusters to settle claims. Combined, clients ultimately recovered over \$70M dollars in business and contingent business interruption losses. In addition to common claim measurement and calculation issues, these claims included several additional contentious issues which were addressed in the preparation and negotiation of the claims, including:
 - Definition of the Period of Restoration and Extended Period of Indemnity for clients suffering extended delays repairing property damage and other clients with contingent BI losses projected to last for several years.
 - Application of coverage(s), exclusions, limits and deductibles to multiple occurrences.
 - Law & Ordinance and Civil Authority impacts and coverage(s).

- “Make-up” sales
- Newly-started businesses, including enterprises that were not yet profitable.

Work was performed for the following businesses/industries:

- Hospitality
 - Commercial Real Estate Development
 - Retail
 - National and Local Media Advertising
 - Internet Sales
 - Direct Marketing
- » Assisted three major oil companies in the preparation, presentation and negotiation of liability insurance claims for past and future environmental and asbestos liabilities. Efforts included valuation of environmental liabilities, allocation of liabilities to insurance coverage, development of claim values and preparation, presentation and negotiation of claims to insurers. Clients recovered over \$400 million in costs.
- » Assisted a large insurance carrier in valuing over 9,000 asbestos claims from a bankrupt insulation distributor/installer. Work included assessment of liability and exposure parameters, accumulation, review and quantification of existing claims, estimation of value for potential future claims, review of insurance policy detail to assess coverage and potential defenses, historical analysis of insured’s operations, and allocation of quantified costs to insurance coverage. Work product was used to ultimately settle the claims with approval by the bankruptcy court.
- » Assisted a steering committee of insurance companies in the evaluation of over 4,000 asbestos claims for a West Coast distributor and installer of refractory brick products. Efforts included a qualitative evaluation of job site histories and profiles for purposes of determining the nature and parameters of exposure. These profiles were then to be used for determination of “products” versus “non-product” liability exposure and subsequent allocation of damage amounts to coverage.

PUBLICATIONS

Authored or Co-Authored the following:

“The Insured’s Perspective on the Forensic Accountant’s Role in Disaster Recovery”, *TORTSOURCE (American Bar Association Section of Tort, Trial and Insurance Practice)*, Winter 2014 Vol. 16, No.2.

“Business Interruption Claims 101: Issues Regarding the Measurement, Calculation and Negotiation of Business Interruption Claims”, *ABA TIPS ICLC Mid-Year Meeting*, February 2010.

“Analyzing Settlements and Negotiating Complex Liability Insurance Claims, A Financial Consultant’s Perspective”, *The Brief (ABA Section of Tort, Trial and Insurance Practice)*, Fall 2006 Vol. 36, No.1.

“Recent Issues in the Allocation of Asbestos Claim Costs to Insurance Policies”, *Coverage (ABA Section of Litigation, Committee on Insurance Coverage Litigation)*, March/April 2005.

“Creative Settlements in the Complex Insurance Coverage Context”, *John Liner Review*, Spring 2004.

PRESENTATIONS

“Business Interruption Claims 101: Measurement and Calculation Methodologies and Claim Preparation Issues”, *Cleveland Metropolitan Bar Association Insurance Law Section CLE Program*, May 30, 2014.

“Business Interruption Claims 101: Measurement and Calculation Methodologies and Claim Preparation Issues”, *Ohio Association for Justice CLE Course ‘A Litigator’s Guide to Property and Liability Insurance’*, January 16 and 30, 2014.

“Business Interruption Claims 101: Measurement and Calculation Methodologies and Claim and Adjusting Issues”, *Risk & Insurance Manager Society (“RIMS”) NorthEast Ohio Chapter Education Day*, November 19, 2013.

“The Insurance Response to Disasters: Considerations for Insurers and Businesses”, CLE Webinar for *American Bar Association CLE Premier Speaker Series*, April 15, 2013

“Business Interruption Claims: Measurement and Calculation Methodologies and Claim Preparation and Adjusting Issues”, *CPCU Society, Golden Gate Chapter, All Industry Day*, March 29, 2013.

“Business Interruption Claims: Measurement and Calculation Methodologies and Claim Preparation Issues Facing Policyholders”, CLE presentation for *New Jersey Bar Association Insurance Law Section*, March 16, 2011 and CLE presentation for *Philadelphia Bar Association Insurance Law Committee*, February 9, 2011 .

“Proper Measurement of Damages in Lost Profits, Business Interruption and Other Commercial Litigation”, *Indianapolis Bar Association*, June 9, 2010.

James D. Paskell

“Ins and Outs of Business Interruption Claims”, American Bar Association, Tort and Insurance Practice Section, Insurance Coverage Litigation Committee Mid-Year Meeting, February 27, 2010.

“Transferring Mass Tort Risks: Financial Considerations and Potential Capital Market Transactions”, American Bar Association, Tort and Insurance Practice Section, Toxic Tort and Environmental Law Committee Spring Meeting, February 16, 2007.

“Creative Settlements in Complicated Coverage Cases”, American Bar Association, Tort and Insurance Practice Section, Insurance Coverage Litigation Committee Mid-Year Meeting, February 21 2004.

**National Beef California, LP
Wastewater O&M Spending
Annual Totals
2006-2012**

Year	Annual Total
2006	\$61,304
2007	\$8,102
2008	\$0
2009	\$2,419
2010	\$0
2011	\$504,367
2012	\$1,204,087
Total:	\$1,780,279

Notes:

Source: *Waste Water Spending.xls*. Per discussions with Ryan Johansen, Consumer Ready Controller for National Beef, the source for this data is National Beef's General Ledger.

National Beef California, LP
Annual Wastewater Capital Expenditures
2007-2012

Year	Project	Expenditure
2007	Add Aerators	\$36,000
	Waste Water Ammonia- Baffle Install	\$677,000
Subtotal:		\$713,000
2008	Bio Gas	\$1,500,000
	Aerators	\$129,000
Subtotal:		\$1,629,000
2009	Pond Clean out	\$379,000
Subtotal:		\$379,000
2010	Sludge Removal	\$337,000
	Sludge Removal Test	\$146,000
Subtotal:		\$483,000
2011	Lagoon cover repairs	\$17,000
	Effluent Sample Meters	\$90,000
	Belt Press	\$1,700,000
	#2 Grease Modify Phase II	\$1,400,000
	Pond 2 Improv. & Permitting	\$162,000
	Ammonia Reduction	\$800,000
Subtotal:		\$4,169,000
2012	Additional Aeration	\$192,000
	Pond 2 Aeration	\$540,000
	Pond 2 Emergency Grease Removal	\$292,000
	Grease Control & Dredge Pond 3C	\$964,000
	Design/ Engineer Pond 3C	\$96,000
	Pond 3C Dredge Remaining Costs	\$245,000
	Pond 1 Grease Mitigation- DAF	\$528,000
	Pond 3 Dredge Supplement	\$93,000
Subtotal:		\$2,950,000
Total:		\$10,323,000

Notes: _____

Source: NBC Capital Spending Excel Chart.pdf

1
2
3 **STATE OF CALIFORNIA**

4 **STATE WATER RESOURCES CONTROL BOARD**

5 In the matter of:

6 ADMINISTRATIVE CIVIL LIABILITY
7 COMPLAINT R7-2014-0041 ISSUED
8 TO NATIONAL BEEF CALIFORNIA,
9 LP, OWNER/OPERATOR
WASTEWATER TREATMENT
FACILITY

10 CITY OF BRAWLEY-IMPERIAL
11 COUNTY

PREFILED TESTIMONY OF PETER S.
SILVA

12 PARTHENIA B. EVANS
13 STINSON LEONARD STREET
14 LLP
15 1201 Walnut Street, Suite 2900
16 Kansas City, MO 64106
17 Telephone: (816) 691-3127
18 Facsimile: (816) 412-1130

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22 Telephone: (303) 376-8410
23 Facsimile: (303) 578-7967

21 J.G. ANDRE MONETTE
22 BEST BEST & KRIEGER
23 655 West Broadway, 15th Floor
24 San Diego, CA 92101
25 Telephone: (619) 525-1300
26 Facsimile: (619) 233-6118

24 Attorneys for Discharger:

25 **National Beef California, LP**

1 Q. Tell us who you are and what you currently do for a living.

2 A. My name is Peter Silva. I currently have my own one-person consulting firm, Silva
3 International. I provide consulting services to public and private sector clients in the
4 areas of water resources management, water policy and water quality regulatory issues.

5 Q. Describe your educational experience.

6 A. I graduated in 1977 from Cal Poly, Pomona with a Bachelor's Degree in Civil
7 Engineering, specializing in Water Resources. I am a registered Professional Engineer in
8 the state of California, and a Board Certified Environmental Engineer.

9 Q. Describe your professional experience.

10 A. I have over 37 years of professional experience in the water and wastewater fields.
11 The highlights of my career are that I served as Vice-Chair of the California State Water
12 Resources Control Board for 6 years and held the post of Assistant Administrator for the
13 Office of Water at the U.S. EPA for 2 years, having been appointed by President Obama.
14 I was also appointed by President Clinton to the Board of the Border Environment
15 Cooperation Commission.

16 I served in a number of positions throughout my career, including operating the City of
17 San Diego's water plants for five years. I managed the San Diego office of the
18 International Boundary and Water Commission for five years and was Assistant General
19 Manager for the Border Environment Cooperation Commission for three years. I also
20 performed numerous regulatory functions as a Staff Engineer with the Regional Water
21 Quality Control Board offices in Los Angeles and San Diego for over four years.

22 Q. What were you asked to do in this case?

23 A. I was hired to assist other technical experts in reviewing the regulatory history of both
24 the Brawley WWTP and the National Beef WWPS. My job is to review appropriate
25 documents and form opinions about the regulatory history of the WWTP and WWPS. I
26 have also been tasked with giving my opinion on the regulatory issues associated with
27 pass through and interference and how they relate in this case.

28

1 Q. What should the City of Brawley have done in regulating the WWPS and what should
2 the Regional Water Quality Control Board (RB) have done in regulating the National
3 Beef WWPS?

4 A. My review of the regulatory environment in Brawley shows that the City of Brawley
5 is the owner and operator of the WWTP that discharges into waters of the U.S. (New
6 River). As such, it is appropriate that the City of Brawley (City) is the entity that is
7 issued the NPDES permit for the facility and is responsible for meeting the discharge
8 standards contained in the permit.

9 The relationship between the City and National Beef California (NBC) is that NBC
10 discharged wastewater (WW) into the City sewage system. The City has the
11 responsibility and authority to regulate discharges into its system through the
12 Pretreatment Program (PP) as authorized and regulated by the U.S. EPA.

13 The relationship between the RB and NBC is that NBC owned and operated its WWPS
14 on site. Because the discharge from the WWPS is not to waters of the U.S. and instead
15 potentially to groundwater, the discharge is regulated by the RB under authority of the
16 California Porter-Cologne Act. As such, the discharge is regulated through a Report of
17 Waste Discharge (RWD) issued by the RB.

18 In reading through the RB enforcement orders and associated documents, it is obvious
19 that the City was negligent in its duty of implementing and enforcing a proper PP to
20 manage the WW flows into its system. Additionally, it is apparent that the City also did
21 not initially build and operate WW treatment facilities that could properly treat the WW
22 loads entering the WWTP. This led to the City having numerous instances of non-
23 compliance with several discharge standards contained in its NPDES permit.

24 In reviewing the role of the RB in all these matters, it appears that they took some
25 liberties with the applicable regulations and assigned responsibilities and liabilities in
26 creative ways. The following are my thoughts on this.

1 First, the role of the RB with NBC with respect to regulatory oversight of the NBC
2 WWPS seems appropriate. As I noted before, the RB issued NBC a RWD for the facility
3 and made necessary inspections and also made recommendations for improvements to the
4 facility's operations based on relevant monitoring data. NBC appears to have acted in
5 good faith in making the necessary improvements to ensure that the requirements in the
6 RWD were met. In the RB Administrative Civil Liability Complaint (ACLC) issued to
7 NBC, there are no issues raised regarding any non-compliance with the RWD.

8 The role of the RB with respect to the City and NBC as envisioned by Jose Angel is
9 much more complex and confusing. As I stated before, the City had the responsibility to
10 establish and implement a PP to properly manage its WWTP. It also had the
11 responsibility to build and operate a WW treatment facility that could treat the incoming
12 WW flows to meet all the discharge standards contained in its NPDES issued by the RB.
13 The RB clearly has the responsibility to monitor the operation of the City WWTP to
14 ensure it meets the requirements of the NPDES permit. The RB does not have this same
15 responsibility with respect to the flow from NBC into the City system. This
16 responsibility falls on the City through a properly managed PP.

17 With respect to the RB oversight of the City's NPDES permit, Mr. Angel details the many
18 RB orders that were issued to the City in an attempt to correct the myriad of problems at
19 the City's WWTP and the inability to implement a proper PP. These are summarized in
20 Table 2, page 3 of the Brawley ACLC, for the years 1999-2010. The RB also imposed
21 several fines related to non-compliance with regulations in 2006, as noted on page 4
22 (Item 12) and on page 5 (Item 15) of the Brawley ACLC.

23 It is obvious that the RB was aware of the inability of the City to perform its duties as the
24 NPDES permit holder and as the Control Authority for the PP. The RB was also aware
25 that the City enacted a pretreatment ordinance and imposed fines on NBC under that
26 ordinance. On Page 6 (Item 19) Mr. Angel points out that the City established its
27

1 Ordinance but states that the RB never approved it. Also, on Page 8 (Item 35) of the
2 NBC ACLC, Mr. Angel makes note that the City cited NBC on several occasions.
3 In summary, the regulatory environment prior to the issuance of the ACLCs was
4 "normal". The RB was overseeing the operations of the City with respect to its NPDES
5 permit, both from the operation of the POTW and the implementation (or lack thereof) of
6 a PP. The City was overseeing the discharge of WW flows from NBC into its system and
7 taking actions to manage those flows.

8 Q. What is the significance of the regulatory approaches by the RB relative to the City
9 and NBC?

10 A. While the regulatory environment was "normal" prior to issuance of the ACLCs, it
11 changed drastically after that point. In my review of the ACLCs issued against the City
12 and NBC, Jose Angel (JA) appears to transpose authorities and responsibilities to the
13 various players to fit his enforcement approach. Additionally, Mr. Angel appears to be
14 very arbitrary in the manner in which he establishes and assigns fault with respect to
15 water quality violations and delays in implementation of programs and improvements to
16 treatment works.

17 First, as we have noted the City did not establish a proper PP and did not build and
18 operate proper WW treatment facilities. It is also important to note that NBC was the
19 regulated entity and the City was the regulator with respect to the City's PP and NPDES
20 permit. Yet Mr. Angel seems to turn this regulatory concept on its head by taking the
21 approach that NBC "could have known" about the City's lack of compliance. He makes
22 reference to this in several items in the ACLC against NBC. He seems to be imposing
23 quasi-regulatory responsibilities on NBC that have no basis in fact. It was clearly not
24 NBC's responsibility to "monitor" the reliability of the City's treatment facilities.

25 There is nothing in the record to suggest that the RB informed NBC that it "could have
26 known" about the City's lack of compliance with discharge standards. As stated before,
27 the relationship between the City and NBC was proper and well documented by the RB.

1 It is not until the ACLCs are issued that Mr. Angel takes the stance that NBC could
2 somehow have taken a position of greater participation in monitoring and operation of the
3 City's WWTP. I find nothing in the PP regulations that requires that kind of action on the
4 part of an Industrial User (IU).

5 Another disturbing aspect of Mr. Angel's enforcement approach is that he imposes fines
6 on NBC for non-compliance of requirements imposed on the City, not NBC. In imposing
7 fines to NBC, Mr. Angel consistently makes note that "the City of Brawley violated..." in
8 reference to violations of NPDES water quality standards. He does not say that "NBC
9 caused violations..." He makes no attempt to correlate the violations by the City to any
10 relevant data on how NBC could be responsible for those violations. Instead, he attempts
11 to use the pass through and/or interference argument as a catch-all to make NBC totally
12 responsible for the City's NPDES violations. As I will detail next, I do not believe that
13 was the intent of the EPA regulations on PP.

14 Q. What is pass-through? What is interference?

15 A. "Pass-through" and "interference" are terms established by EPA (40 CFR part 403)
16 and are general prohibitions in the PP regulations for control of industrial flows into
17 POTW systems.

18 Mr. Angel includes the definition of these two terms in page 4 (Items 15-17) of the NBC
19 ACLC.

20 The technical and scientific analysis required to establish a proper PP is a way for the
21 Control Authority (CA) (in normal cases the municipality) to better understand its system
22 in order to (1) control incoming industrial flows and (2) build and operate the necessary
23 WW treatment and disposal facilities to handle all the anticipated WW loads from its
24 service area. The intent of the PP regulations is to provide assurance to the CA that its
25 WW system will be protected from unauthorized inflows that could disrupt or damage its
26 system and/or cause noncompliance with NPDES regulations.

1 The key to the PP regulations is that the CA must build and operate WW facilities that
2 can handle the WW flows that are collected in the system. In essence, the CA must have
3 something "to protect". In September, 1987 the EPA produced a document entitled,
4 "Guidance Manual for Preventing Interference at POTWs". I make note of the following
5 guidance contained in page 3:

6 *"However, as discussed in the Federal Register preamble to the new definitions of pass-*
7 *through and interference, an industrial user's discharge is considered to be interference*
8 *or pass-through only if the discharge is the cause of the POTW's noncompliance. If a*
9 *malfunction or improper operation by the POTW, rather than an industrial user's*
10 *discharge, causes the POTW's noncompliance with its NPDES permit or sludge*
11 *requirements, interference and/or pass-through are not occurring. The EPA intends the*
12 *definitions to be interpreted in a manner consistent with the Congressional intent that*
13 *pretreatment technology not be required as a substitute for adequate operation and*
14 *maintenance of the POTW."*

15 Certainly, it has been well established that "improper operation by the POTW" fits the
16 situation in Brawley prior to the improvements put in operation in 2011. In Mr. Angel's
17 Ex. 45, he states that,

18 *"Self- monitoring data provided by the City indicate that prior to the slaughterhouse*
19 *going into operations in late October 2001, the City WWTP was already dealing with*
20 *loads in the 300 to 500 lbs/day range from its residential and commercial users. That*
21 *range of ammonia loading was already causing noncompliance with the City's NPDES*
22 *permit toxicity provisions because evidently (a) the City had not established institutional*
23 *controls...and (b) the WWTP the City had at that time lacked the ability to reduce*
24 *ammonia to nontoxic levels".*

25 Also, on Pages 5 & 6 (Item 18) of the Brawley ACLC, it is stated that, *"...since 1999 the*
26 *Discharger has struggled to comply with its previous NPDES permit limits for chronic*
27 *and acute toxicity, BOD, TSS, and bacteria limits and particularly with its current*

1 *NPDES permit limits for ammonia. Based on the Discharger's history of non-compliance*
2 *with effluent limitations...RB staff reasonably concluded that the Discharger's WWTPs*
3 *did not have the necessary capacity to properly treat existing ammonia loads from*
4 *domestic users, let alone increased ammonia loads..."*

5 Based on the EPA document and the well-established problems at the City WW facilities,
6 a reasonable person would come to the conclusion that the EPA guidance outlined above
7 would govern in this case. Yet Mr. Angel not only disregards this guidance, but goes to
8 the extent of making NBC responsible for the City's noncompliance.

9 Q. What are your overall opinions regarding JA's regulatory approach?

10 A. I focused my review primarily on the two ACLCs issued against Brawley and NBC.
11 In that review, I noted an approach by Mr. Angel that to me was "creative" in terms of
12 normal practice for regulatory oversight and enforcement. The following are my overall
13 opinions.

14 JA appears to take the approach that he will take enforcement action against Brawley for
15 the lack of implementation of the pretreatment program and proper WW facilities, and
16 that he will essentially make NBC totally liable for the noncompliance with City's
17 NPDES requirements. I drew that conclusion through statements made by Mr. Angel
18 throughout the ACLCs.

19 First, JA appears frustrated with actions and inactions on the part of the City. The
20 following are some examples:

21 - Brawley ACLC, Page 6 (Item 19): *"Further, the Discharger had the power to impose*
22 *finer up to \$5,000 per violation per day against the NBC for violation of its ordinance,*
23 *but failed to do so before 2008".*

24 - Brawley ACLC, Page 10 (Item 33): *"Had the RB staff known that such requirements*
25 *would not be met, staff would never have allowed or agreed to RB approval of interim*
26 *effluent limits or exemption from MMPs for ammonia violations in the CDO."*

1 - Brawley ACLC, Page 12 (Item 45): *"The Discharger has the worst record of*
2 *compliance for POTWs in the Imperial Valley. This weighs heavily against the*
3 *Discharger."*

4 JA also appears very concerned with what he seems to perceive as near criminal behavior
5 on the part of the City. The following are some examples:

6 - Brawley ACLC, Page 13 (Items 51 & 52): *The entire items.*

7 - Brawley ACLC, Pages 13 & 14 (Item 53): *The entire item.*

8 Despite the well-established violations of the City's NPDES permit in the Brawley
9 ACLC, JA only imposes penalties totaling \$378,000. He does however impose a total of
10 \$7,370,000 of penalties for violating the CDO requiring the establishment of a proper PP.
11 The penalties are ultimately reduced to \$1,734,778 and then further reduced in settlement
12 to \$1,000,000, but it is notable that based on the amount of the penalties, it is obvious that
13 Mr. Angel focused primarily on the City not meeting the requirements of the CDO and
14 not on the City violating its NPDES requirements.

15 Turning now to JA's approach to NBC, he again appears to take the approach that NBC
16 was totally responsible for the City's NPDES violations. I have already covered Mr.
17 Angel's concept that NBC "could have known" that NBC caused or contributed to pass-
18 through and/or interference. This train of thought seems to be justification enough for
19 Mr. Angel to transfer the responsibility for the NPDES violations wholesale onto NBC.
20 He follows this train of thought into the setting of penalties for NBC. Whereas Mr.
21 Angel establishes penalties of \$378,000 to the City for violating NPDES standards, he
22 establishes penalties of \$3,750,000 to NBC for pass-through and interference for
23 essentially the same NPDES violations. As I stated previously, Mr. Angel made no
24 attempt to correlate the alleged NBC violations to actual NPDES violations.

25
26 The penalties established by Mr. Angel raise some troubling questions. First, why the
27 ten-fold difference between the City and NBC penalties? Why was the City not fined at

1 least the same amount as NBC? And conversely, why wasn't NBC fined the same amount
2 as the City? It reading the two ACLCs, it is difficult to follow the train of logic in the
3 why and how the penalties were calculated the way they were.

4 I will restate my main point that the methodology used by Mr. Angel in putting together
5 the two ACLCs was in my opinion arbitrary. I believe he stretched the letter of the law in
6 coming to his conclusions about the liabilities of the parties involved and that
7 consequently set the basis for the methodology he used in setting the penalties.

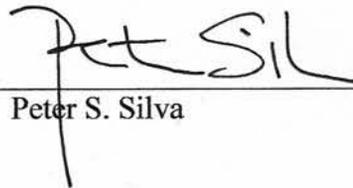
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10 Dated: September 18, 2014

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By:



Peter S. Silva

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RESUME OF PETER S. SILVA

(7/09-2/11) Assistant Administrator for Water: Environmental Protection Agency

Appointed by President Obama and confirmed by the U.S. Senate, was sworn in as Assistant Administrator for the Office of Water (Office) at the Environmental Protection Agency (EPA) in July, 2009. Working directly with EPA Administrator Lisa Jackson, advanced the work of the agency, especially in regard to policy issues related to national water and wastewater matters.

As AA for Water, was responsible for implementing and administering the provisions of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). This included the promulgation of new rules and regulations and oversight of existing regulatory framework. In this effort, worked closely with states and other stakeholders to ensure effective public input and involvement. Also was responsible for interaction with the White House and the Congress in presenting Agency policy recommendations.

Provided administrative direction and oversight through the supervision of the Office's staff. Staffing included approximately 700 personnel in the HQ office. Additionally, the Agency's 10 regional offices included a total of about 1400 "water" staff that were funded through the Office's budget. In this regard, worked extensively with the 10 Regional Administrators in Agency policy and administrative matters.

Was responsible for the Office's budget, which averaged over 5 billion dollars annually. The budget included the State Revolving Fund for both the CWA and SDWA. In FY 2010, received an additional infusion of 6 billion dollars under the American Recovery and Reinvestment Act. Had responsibility for preparing, presenting and defending the budget in the approval process through the Office of Management and Budget and the Congress. Also responsible for allocation of SRF and other funding to States, Tribes and other recipients.

As part of day-to-day duties, coordinated extensively with other Agency offices, such as General Counsel, Air and Radiation, Solid Waste and others. Also worked closely with political appointees in other federal agencies such as DOJ, DOI, USDA, NOAA, FDA and DOE. The work of the Office also involved close coordination with States and Tribes as well as public and private interest groups.

A major part of AA duties involved representing the Agency before a number of different fora and audiences. This included testifying at Congressional hearings, conducting press interviews, performing conference speeches and interacting at various stakeholder sessions. Also interacted with foreign officials from Canada, Mexico, China and Australia as part of advancing the Agency's involvement in international environmental agreements.

(11/05- 7/09) Executive Policy Advisor: Metropolitan Water District

Working directly for the Assistant General Manager, provided policy advice to MWD management and staff in water resources development and management in the southern area of California. Specifically, acted as MWD liaison with the Imperial Irrigation District and the San Diego County Authority. Also worked on statewide water issues that require expertise in policy matters related to both water rights and water quality.

Represented MWD in policy and technical matters related to the Colorado River (CR). Worked with other staff in developing new water sources in the basin and assuring MWD's sources were protected. Took the lead in advancing a federal and state initiative to work with the government of Mexico to develop a binational cooperative process to maximize the use of the CR water resources. Was also appointed by Governor Schwarzenegger to the CR Salinity Control Forum.

In working with MWD management staff, assisted in developing policy direction for MWD on a number of statewide issues. Prepared and presented reports to the MWD Board of Directors for review and approval. Represented MWD in conferences and in other fora dealing with water policy.

(5/00-11/05) Board Member: California Water Resources Control Board

Appointed to the SWRCB in May, 2000 by Governor Gray Davis and reappointed to the Board in February, 2004 by Governor Arnold Schwarzenegger. Served as Vice-Chair of the Board for 5 years. Worked with the Board and staff to provide policy direction to the work of 1700 staff at the Board and the nine Regional Water Quality Control Boards.

As Board Vice-Chair, maintained dialogue with the Governor's office with respect to statewide policies on water. Reviewed and approved administrative and policy actions of the Board at official meetings. Acted in capacity of administrative law judge in presiding as hearing officer in water rights hearings. Performed hearing officer role in appeal of decisions made by the RWQCB.

Took the lead on the Board in issues related to working with Mexico on border water quality and supply issues. Also lead Board work on issues requiring engineering expertise. Maintained working relationships with peers on other state boards and commissions to ensure coordination of common programs.

Worked with staff on legislative issues of interest to the Board. As liaison with three RWQCBs, provided guidance and maintained communication with the Board. Represented the Board on numerous forums throughout the state, as well as other national and international meetings. Interacted with the media to provide information relative to the agency's efforts.

(5/97-5/00) Dep. General Manager: Border Environment Cooperation Commission

Worked with the Mexican GM to implement the Board's policy direction in guiding the work of the agency in the U.S. and Mexico. Represented U.S. interests in agency's efforts through guidance from U.S. Board members and the U.S. State Department. Supervised the work of 36 staff, creating innovative techniques for management of integrated binational team. Developed and guided agency budget through the federal process.

Worked directly with U.S. and Mexican federal legislators on the policy implications of agency's work in the two countries. Represented the agency in a number of forums in the two countries, as well as international meetings requiring bilingual skills. Dealt directly with all types of news media in both countries and both languages in responding to information regarding the agency.

With the Mexican GM, formulated solutions to complex binational issues and presented them to the Board for action. Worked with local, state and federal agencies in both countries to provide financial assistance to border communities. Provided guidance to staff on the technical aspects of providing support to nearly \$1.5 billion of infrastructure projects. Dealt with the EPA and Mexico's SEMARNAT to develop new approaches to develop binational environmental documentation for border projects.

(1/92-5/97) Deputy Director: City of San Diego Water Utilities Department

In managing the Water Production Division, the operations and maintenance of ten dams and reservoirs and three major water plants with a capacity of 300 MGD to provide potable water to 1.5 million residents. Supervised a staff totaling 270 employees located in over 12 sites and comprised of a number of different classifications. Developed and managed the Division's annual \$100 million budget. Worked with the Department Director on formulation of water policy and presented to City Council for guidance and approval. Represented the Department with the news media and various public forums.

(6/87-1/92) Asst. Deputy Director: City of San Diego Clean Water Program

Supervised 32 City staff and almost 100 consultant staff in innovative approach to program management. Assisted in operating budget development and approval process. Oversaw work of consultant staff relating to Program's facilities planning effort, as well as pre-design, design and construction management work. Provide technical support to City's bonding efforts to provide funding for Program's \$1.5 billion of wastewater infrastructure.

Worked with City and consultant staff to develop innovative Multiple Species Conservation Plan to support programmatic EIS. Made numerous public presentations in support of Program's public relations plan. Assisted in developing, negotiating and overseeing a number of contracts for professional services. In early stages of Program, acted as Program Manager for a multi-million dollar pipeline project.

(6/83-6/87) Resident Engineer: International Boundary and Water Commission

Under supervision of the main El Paso office, maintained the San Diego office of the IBWC. In coordination with a Mexico counterpart, responsible for resolution of disputes arising along the California/Baja California border related to water and boundary issues. Monitored major border pollution problems in the areas of Tijuana/San Diego, Mexicali/Calexico and the twin cities of Tecate, BC and California. Prepared and presented technical reports to the U.S. IBWC Commissioner to be used as part of policy formulation in international context of agency's work. Participated in high-level diplomatic meetings as part of U.S. delegation. Represented the agency before local, national and international media.

(9/82-6/83 & 6/77-10/80) Assoc. Engineer: Regional Water Quality Control Board

As staff engineer, worked for both the Los Angeles and San Diego regional offices performing all staff functions. Wrote state and federal water quality permits for all types of discharges. Performed monitoring of dischargers, both through review of reports and through scheduled field inspections. Worked with other Board staff in enforcement actions as required. Prepared and presented written and oral reports to the Regional Board as part of overall duties.

(10/80-9/82) Assoc. Engineer: Otay Water District

Worked as staff engineer for a local public water utility in the San Diego, California area. Acted as design engineer for improvements and upgrades to existing District water and wastewater facilities. Served as Project Manager on planning, design and construction of new District projects. Provided technical assistance to field operations crews in resolving issues as they arose. Interacted with regulatory agencies in support of District's water plants. As part of overall staff duties, prepared and presented technical reports to the District Board of Directors.

OTHER INFORMATION:

In 1994, appointed by President Clinton to the BECC Board

Have received a number of professional awards

California Registration as Professional Engineer: No. 32190

BS Degree in Civil Engineering (California Polytechnic University, Pomona), 1977

100% fluent in Spanish

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

PREFILED TESTIMONY OF NATHAN
ZAUGG

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Attorneys for Discharger:

National Beef California, LP

1 Q. Tell us who you are and what you currently do for a living

2 A. My name is Nathan Warren Zaugg. I am a professional engineer with MWH Global and am
3 currently their global industrial wastewater practice lead.

4 Q. Describe your educational background.

5 A. I have a B.S. degree in Environmental Engineering and M.S. degree in Civil and
6 Environmental Engineering from Utah State University in Logan, Utah.

7 Q. Describe your professional experience.

8 A. I am a Professional Engineer with a license in Utah. I started my career with Eimco Process
9 Equipment, a major purveyor of wastewater treatment equipment. There I was responsible for
10 managing over 100 projects at various municipalities to provide process solutions for
11 wastewater treatment. These solutions ranged from the headworks to the biological treatment
12 system of a variety of wastewater plants, including solids management alternatives.
13 After 6 years with Eimco, I left and began working with MWH. I was initially brought on to
14 help MWH by providing expertise in municipal wastewater treatment. Gradually, I was brought
15 aboard some industrial wastewater treatment projects and I managed several industrial
16 wastewater treatment projects. Eventually, I was asked to take a role as the global industrial
17 wastewater treatment practice manager, which is my current title. In this role, I am responsible
18 for developing MWH's strategy for helping our clients manage their complicated wastewater
19 flows for manufacturing, mining, oil and gas, and industrial clients. This includes oversight for
20 projects similar to the National Beef pretreatment facility.

21 Q. What were you asked to do in this case?

22 A. I was asked to review the Administrative Civil Liability Complaint R7-2014-0041 (the
23 "Complaint") and evaluate the Complaint with respect to accuracy. I was also asked to examine
24 the influent and effluent data for both the Brawley WWTP and the National Beef pretreatment
25 plant that was found in the Complaint, in the EPA ECHO database, in the CIWQS database,
26 and in the documents obtained through subpoena from the City of Brawley (Brawley) and the
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1 Colorado River Water Quality Control Board (CRWQCB). I was asked to quantify the number
2 of violations that occurred at the Brawley WWTP and to evaluate the role of National Beef's
3 pretreatment facility in those violations.

4 Additionally, I was asked to provide my opinion on the capacity of the Brawley WWTP and the
5 National Beef pretreatment facility to manage the wasteload that was received by the facilities.

6 Q. Describe what you did to complete this task.

7 A. I examined the data presented in the Complaint and also compiled data from a variety of
8 reports that were delivered by Brawley to the CRWQCB. I compared this data with the
9 applicable discharge requirements to determine whether or not a violation occurred. I then
10 compared the Brawley data with the discharge data from the National Beef pretreatment facility
11 to help determine if the water discharged from the National Beef facility caused pass through
12 and interference resulting in violations at the Brawley WWTP.

13 Additionally, I looked at documentation regarding the design of the treatment systems used by
14 the Brawley WWTP prior to Brawley Beef constructing the slaughterhouse, during the period
15 of concern with respect to ammonia violations by the Brawley WWTP (2/2007 – 11/2008), and
16 how violations were resolved by the Brawley WWTP along with examination of data through
17 2013 for violations of TSS, BOD, ammonia, toxicity, and bacteriological requirements. I also
18 examined decisions regarding applicable treatments systems for the Brawley Beef facility and
19 subsequent decisions made by National Beef concerning modifications to the pretreatment
20 facility after purchase of the Brawley Beef operation, and modifications made to the Brawley
21 WWTP by the City of Brawley before commencement of operations by Brawley Beef.

22 I also relied on inspection reports from the CRWQCB concerning the Brawley WWTP and the
23 National Beef Pretreatment Facility. While I was able to visit the National Beef facility to
24 observe general conditions after the plant had closed, I was unable to see the facility in
25 operation. I did not have the opportunity to visit the Brawley WWTP facility, but this was not
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1 relevant in my assessment, since the facility is currently operating a very different treatment
2 process than was used at the time of the violations.

3 Q. Describe what you found in your review of the NPDES violations at the Brawley WWTP
4 alleged in the complaint.

5 A. There were clearly violations of the NPDES permit by Brawley WWTP. These violations
6 began prior to construction of the Brawley Beef operations. Initially, violations were largely
7 associated with toxicity as determined by Whole Effluent Toxicity (WET) testing. It is likely
8 that the toxicity at this time was the result of excessive ammonia in the effluent, which led to
9 establishment of ammonia discharge limits for the Brawley treatment facility. Beyond toxicity,
10 after Brawley received an ammonia effluent requirement, it violated its NPDES permit
11 obligations on a monthly and weekly basis.

12 Furthermore, there were violations of BOD, toxicity, and microbiological indicators. The
13 complaint noted a weekly and monthly TSS violation on 5/7/2012 and May 2012, but this could
14 not be corroborated in the data, since the EPA Enforcement and Compliance History Online
15 (ECHO) database did not corroborate this data and it appears that the data was noted as being
16 non-CIWQS Data in the spreadsheet used by the CRWQCB to determine the presence of a
17 violation. The data in the ECHO database showed that the May, 2012 date referenced in the
18 Complaint had an effluent concentration of 5.6 mg/L, which did not exceed the monthly limit
19 of 30 mg/L. Though the sample on 5/7/2012 was entered into the CIWQS as a value of 604
20 mg/L, which would have resulted in monthly and daily violations, it is likely that this was a
21 mistake and that the actual concentration was 6.4 mg/L, which will result in an average value of
22 5.6 mg/L for the month when all May 2012 samples are averaged together, which precisely
23 matches the 5.6 mg/L value in the CIWQS system for the month of May 2012.

24 There are also some issues with the BOD violations contained in the Complaint. Data included
25 in the Complaint notes violations of the weekly BOD concentration on 3/3/2011, 3/7/2011, and
26 7/2/2011 that were noted in information obtained from the CRWQCB as dismissed for either
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1 being duplicates of existing data or for other unspecified reasons, likely because they covered
2 the same time period as the 3/5/2011 sample. Therefore the three aforementioned violations
3 should not have been included in the Complaint.

4 As noted previously, there were toxicity violations and microbiological contamination issues
5 with the Brawley WWTP facility. These were documented in the Complaint. There were 98
6 different months in which the Brawley WWTP violated with respect to acute or chronic
7 toxicity, of which 51 occurred while National Beef was discharging to the Brawley WWTP,
8 with the balance of the toxicity violations (47) occurring while Brawley Beef owned the
9 slaughterhouse operation. The complaint has indicated that National Beef was responsible for
10 90 occurrences of acute or chronic toxicity in the effluent, which matches the count I
11 completed. The Brawley WWTP also violated Coliform, Enterococci, and E. Coli parameters
12 56 times, as noted in the Complaint. The documentation for these violations from the Brawley
13 WWTP appears to be correct.

14 There are two types of contaminants in water: conservative and degradable. Conservative
15 contaminants are those that are similar to salts. Conservative contaminants do not degrade
16 under any condition and will also not be consumed during biological activity. They remain
17 unchanged through the treatment process. A good measure of the concentration of conservative
18 contaminants in wastewater is the concentration of dissolved solids (e.g. sodium and chloride)
19 in the wastewater. Conservative contaminants will only be able to match the influent mass of
20 the contaminant in a basin and will wash out of the facility in accordance with the basin
21 hydraulic parameters. There is not retention of these contaminants in the basin, since they will
22 not react with the basin contents. The effluent concentration of a conservative contaminant
23 from a wastewater treatment plant will generally resemble a dampened curve of the influent
24 concentration.

25
26 In contrast to conservative contaminants, degradable contaminants will be altered by the
27 treatment process. They will either be broken into more simple components, e.g. sugar being
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1 converted to water and carbon dioxide, they will be assimilated into cellular structures, or they
2 will react and form new compounds.

3 This is how BOD is removed from wastewater. BOD is consumed by bacteria and converted
4 into carbon dioxide, water and additional microbes. These microbes can then be settled out of
5 the wastewater flow. If the microbes are not settled from the wastewater, they are manifest as
6 total suspended solids (TSS) in the wastewater.

7 Ammonia is a degradable contaminant. In the presence of sufficient oxygen and alkalinity,
8 ammonia can be converted into nitrite and then nitrate by a several types of bacteria,
9 collectively referred to as nitrifying bacteria.

10 When conditions are not conducive to conversion, degradable contaminants will resemble
11 conservative contaminants. This means if insufficient aeration is present in a basin, BOD and
12 ammonia could resemble salts in wastewater, in that they will not be transformed during the
13 wastewater treatment process. However, BOD is generally preferentially removed in
14 wastewater systems, since it requires less oxygen to remove BOD and there are many types of
15 microorganisms capable of consuming BOD. Therefore, in overloaded systems, ammonia is far
16 more likely to pass through the treatment system without treatment than BOD. It will not,
17 however, accumulate over long periods of time. It will simply wash out of the basin in
18 accordance with the basin hydraulics, unlike the rapid way ammonia would decrease in the
19 basin in the presence of adequate treatment.

20
21 As a result of toxicity, the Brawley WWTP was required to reduce ammonia discharges in the
22 WWTP effluent. As part of Compliance Order No. R7-2005-0021, the Brawley WWTP was
23 required to discharge no more than 1.1 mg/L or 54 lbs/day of total ammonia on an average
24 monthly basis, and no more than 12 mg/L or 590 lbs per day on a daily basis. These discharge
25 requirements are achievable using technology that was available at the time of issuance of the
26 Compliance Order.

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1 Modifications were made to the Brawley treatment facility in an attempt to control the
2 ammonia discharges, but in no case did these modifications appear to be successful. As a result,
3 the Brawley WWTP was never capable of effectively treating ammonia discharges to the
4 facility. The National Beef discharge had no impact on the Brawley WWTP's inability to
5 effectively treat ammonia. Only when the facility was modified in 2011 was there sufficient
6 capability to treat even the municipal wastewater loads.

7 Conversely, there are many facultative lagoons and aerated lagoons capable of reducing the
8 ammonia in wastewater treatment plant effluent. A very clear example of this statement in
9 action is the pretreatment system at the NBC facility. Pond 2, an aerated lagoon received water
10 that had a mean influent concentration of 142 mg/L and an effluent concentration of 54.1 mg/L
11 from February 2007 to August 2007 removing approximately 62% of the ammonia coming into
12 the pond.

13 The United States Environmental Protection Agency (EPA) has indicated that both facultative
14 lagoons and aerated lagoons are capable of treating high ammonia loads. In two technology
15 briefing documents developed in 2002, the first titled "Wastewater Technology Fact Sheet –
16 Facultative Lagoons," (FLFS) and the second "Wastewater Technology Fact Sheet – Aerated,
17 Partial Mix Lagoons," (ALFS) EPA notes that "Removal of ammonia nitrogen can be
18 significant (up to 80 percent), depending on temperature, pH, and detention time in the
19 system." (FLFS) It is noted however that facultative lagoons don't work as well in winter
20 months, though this guidance is largely focused on locales that exhibit distinct seasonal
21 temperature drops where ambient temperatures routinely drop below freezing, unlike Brawley,
22 CA. In Brawley, lagoon systems would be an appropriate treatment technology year round,
23 since the ambient and water temperatures do not fall low enough to result in significant
24 inhibition of biological treatment processes.

25 Aerated lagoons can achieve even better nitrification performance. This performance is
26 contingent upon the facility being appropriately designed to handle the influent ammonia and
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1 BOD loads, however. As stated by EPA “Significant nitrification will occur during the summer
2 months if adequate dissolved oxygen is applied. Many systems designed only for BOD removal
3 fail to meet discharge standards during the summer because of a shortage of dissolved oxygen.
4 Nitrification of ammonia and BOD removal occur simultaneously and systems can become
5 oxygen limited. To achieve nitrification in heavily loaded systems, pond volume and aeration
6 capacity beyond that provided for BOD removal are necessary. Oxygen requirements for
7 nitrification are more demanding than for BOD removal. It is generally assumed that 1.5 kg of
8 oxygen is required to treat 1 kg of BOD. About 5 kg of O₂ are theoretically required to convert
9 1 kg of ammonia to nitrate.” (ALFS)

10 Facultative lagoons and aerated lagoons each serve their purposes. Facultative lagoons provide
11 a low energy use alternative for wastewater treatment, but require significant land area to
12 adequately remove biodegradable contaminants. Aerated lagoons can be provided in a
13 significantly reduced footprint, but will require significant aeration to properly operate. If
14 aerated lagoons do not have sufficient aeration or oxygen supply, they will be ineffective in
15 removal of ammonia and BOD.

16 The Brawley WWTP began as a hybrid system, in that it was not quite a facultative lagoon and
17 not quite an aerated lagoon. The presence of primary clarifiers in the system prior to 2001
18 would have effectively reduced lagoon influent loading characteristics with respect to solids
19 and settleable BOD, but would have not reduced ammonia concentration significantly.

20 However, this reduction in BOD would have reduced the overall oxygen demand of the system.

21 Modifications to the system resulting from mechanical failures of digester coating systems
22 served to reduce the effective treatment capacity of the Brawley wastewater facility. In 2002,
23 the Brawley WWTP reported that they were required to remove the anaerobic digesters from
24 service due to failure of coating systems on the digesters, which could potentially have led to
25 structural failure of the system. Without the digesters in service, the primary clarifiers of the
26 system needed to be removed from service. Sludge from the primary clarifiers was placed into
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1 what had previously been one of the biological treatment lagoons. Therefore, this mechanical
2 failure of the digesters led to reduction in the treatment capacity of the system by reducing the
3 capacity by resulting in increased BOD in the system due to the presence of settleable BOD in
4 the influent to the remaining treatment lagoons and also through elimination of capacity
5 previously associated with the treatment lagoons.

6 In an attempt to correct the issues associated with ammonia, the City of Brawley elected to
7 implement a design strategy recommended by Nolte Engineering that was intended to result in
8 both nitrification and denitrification of wastewater flows. These modifications were completed
9 in 2006 and consisted of modifications of the aeration system, inclusion of a recirculation
10 system, and establishment of anoxic zones in the initial treatment lagoon. This appears to have
11 been a variation of the Ludzak Ettinger (LE) process, where sludge is recycled in the basin,
12 resulting in introduction of nitrates to the initial anoxic basin. The nitrates are used as the
13 oxygen source for the bacteria in the basin (nitrosomonas), resulting in the release of oxygen
14 gas from the system.

15 The Ludzak Ettinger process selection for this facility was inappropriate. Since the Brawley
16 WWTP did not have a total nitrogen limit on the facility discharge, there was not a need to
17 complete the denitrification process. The only process that the facility should have been
18 concerned with is the nitrification process, whereby ammonia is converted into nitrates. In the
19 nitrification process, the nitrate will not convert back into ammonia unless the bacteria that are
20 produced in the activated sludge process are allowed to degrade under anaerobic conditions.

21 These anaerobic conditions can be avoided with proper aeration of the system.

22 It is clear that there was insufficient aeration after completion of the facility upgrades in 2006.

23 Inspection in 2007 noted that there were many difficulties at the plant in maintaining
24 appropriate dissolved oxygen concentrations in the facility. Additionally, the inspector noted
25 that installation of baffles in the initial lagoon had resulted in significant short circuiting of the
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1 treatment process, which also would have resulted in insufficient detention of wastewater in the
2 system and incomplete development of the treatment process.

3 The major improvement of the system was to have been the ability to recycle sludge in the
4 system, allowing control of the concentration of bacteria in the system. However the way this
5 was implemented would not result in appropriate recycling of activated solids. The sludge
6 recirculation system as designed would have consisted of a pipe in the bottom of the final set of
7 lagoons, which were classified as settling ponds. There was no mechanism of ensuring that
8 activated sludge returned to the system according to design. The system was not constructed in
9 accordance to the design though, and the pipe was installed approximately 6 feet above the
10 bottom of the lagoon. Therefore, it is very likely that only wastewater was returning to the
11 anoxic basin, which would not have allowed proper operation of the process that was used for
12 calculating the expected performance.

13 One of the major problems with maintaining the nitrification process is ensuring that sufficient
14 sludge retention is present in the system to allow growth of the nitrifying bacteria in the system.
15 This basin overloading, short circuiting and lack of appropriate sludge recycling measures
16 would not have allowed sufficient growth of the nitrifying bacteria.

17 A more appropriate modification to the system would simply have been to add sufficient
18 aeration to meet the treatment requirements of the influent wastewater flow. Additional
19 aeration would have been sufficient to result in conversion of the ammonia into an acceptable
20 concentration of nitrate. Instead, the system was left with insufficient aeration due to
21 conversion of part of one treatment basin into an anoxic basin, conversion of another basin into
22 a sludge storage lagoon, and insufficient aeration design in the remaining process units coupled
23 with short circuiting of wastewater flows in the basins.

24
25 Once an appropriate system design corrected the deficiencies resulting from both the removal
26 of the primary clarifiers from service and the inappropriate treatment design, the Brawley
27 WWTP proved capable of removing BOD, ammonia, and TSS from the wastewater flow. The
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1 new design included appropriate reactor design and sufficient aeration supply for both
2 nitrification and BOD removal. The system was also designed for denitrification in anticipation
3 of future regulatory requirements, though denitrification would not have been necessary to
4 meet any compliance order or permit requirement of the existing NPDES permits.

5 Q. How many actual NPDES violations occurred at the Brawley WWTP?

6 A. In total, there appear to have been 236 violations of BOD, TSS, or ammonia during the
7 period in question. Additionally, there were 51 months of toxicity violations at the Brawley
8 WWTP since June, 2006, with 50 acute toxicity violations and 40 chronic toxicity violations
9 and 46 microbiological violations. The sum of these violations is 372 total violations. This
10 contrasts with the sum of violations discussed in the complaint, which was 375. Specifically,
11 there are several BOD violations documented in the complaint that have been tagged as
12 duplicate violations.

13 Additionally, many of these complaints are built upon one another. For example, a series of
14 weekly violations for ammonia concentration will result in a weekly violation for ammonia
15 mass and monthly violations for both ammonia concentration and mass. Toxicity violations
16 also wind up being almost double counted, since it was noted that there were 51 months where
17 toxicity where either acute or chronic toxicity were present in the wastewater and this is being
18 counted as 90 separate violations, rather than 51 monthly toxicity violations. Furthermore,
19 since ammonia was principally responsible for the toxicity violations, it could be stated that the
20 92 weekly ammonia violations wind up being counted as a full 318 of the violations.

21 If violations were limited to one ammonia violation, one toxicity violation, and one BOD
22 violation for each sampling event, it would have resulted in a count of 215 violations, with the
23 monthly and weekly events each counted. This is probably a more sensible approach to
24 numerically tabulating violations rather than double counting violations for concentration and
25 mass, since this was not the intended approach of EPA. Rather EPA was attempting to dissuade
26 dilution of wastewater to avoid breaching concentration limits.
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1 Q. Describe what you found in your review of the correlation between the NPDES violations
 2 at the Brawley WWTP and the waste water discharge from the beef plant.

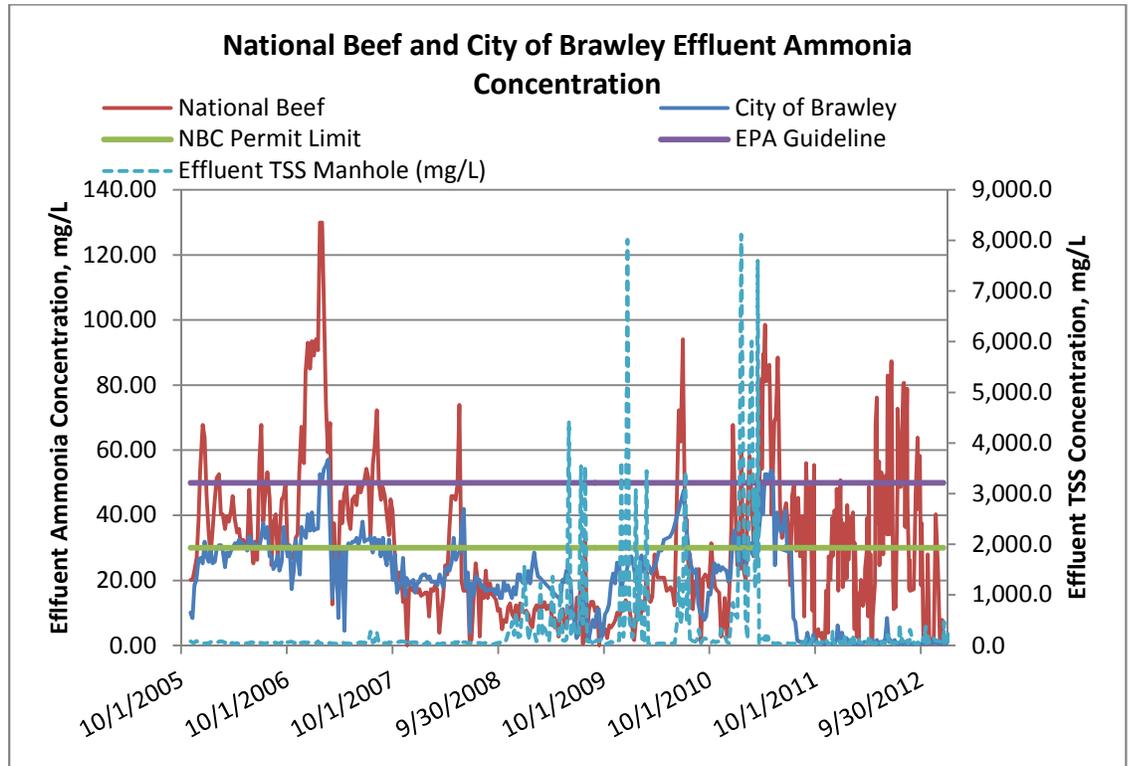
3 A. It is accurate to state that when the Brawley WWTP was in violation of ammonia limits in
 4 the NPDES permit, the National Beef pretreatment facility was discharging ammonia.
 5 However, even if National Beef had not discharged ammonia during the period of concern, the
 6 Brawley WWTP could not have met its permit obligations with respect to ammonia and the
 7 resultant toxicity. As a biodegradable contaminant, ammonia should have been oxidized to
 8 nitrate if the Brawley WWTP were operating properly. Because it was not, it tended to act as a
 9 conservative pollutant. When you eliminate the total load of ammonia from the Brawley
 10 WWTP influent that would have come from National Beef (as shown in the table below), you
 11 find that the Brawley facility would still have had excess ammonia discharges.

Date	Flow, gal	Slaughterhouse Average Effluent Ammonia Loads		City of Brawley Average Effluent Ammonia Loads without Slaughterhouse Contribution	
		mg/L	lbs/day	lbs/day	mg/L
Feb-07	724464	77.28	466.93	1230.46	36.88
Mar-07	675967	23.17	130.62	478.85	14.65
Apr-07	644000	44.38	238.36	451.22	14.58
May-07	688709	44.02	253	727.11	23.63
Jun-07	643709	49.28	264.56	787.54	25.18
Jul-07	664193	53.62	297.02	706.05	22.40
Aug-07	665967	55.33	307	682.82	21.66
Sep-07	666666	41.25	229.36	656.74	20.78
Oct-07	546774	26.43	121	520.47	16.47
Nov-07	664166	15.49	86	603.89	17.79
Dec-07	692741	17.36	100.3	565.45	15.95
Jan-08	659677	16.15	89	661.88	18.59
Feb-08	761964	15.4	98	620.82	17.31
Mar-08	783065	11.61	76	591.84	17.27
Apr-08	594833	34.92	173	475.04	18.99
May-08	775484	46.9	303	687.37	20.97
Jun-08	704333	14.14	83	617.30	19.03
Jul-08	668548	12.88	72	539.12	17.01
Aug-08	571613	17.5	83	497.12	15.01
Sep-08	740000	14.9	92	477.68	14.57
Oct-08	599194	7.84	39	479.69	15.18

			Slaughterhouse Average Effluent Ammonia Loads		City of Brawley Average Effluent Ammonia Loads without Slaughterhouse Contribution		
1							
2							
3		Nov-08	653000	10.5	57	498.89	15.22
4		Dec-08	668194	10.3	57	579.64	17.87
5		Jan-09	635645	9.38	50	664.31	19.81
6		Feb-09	737500	8.12	50	734.32	22.18
7		Mar-09	659677	10.5	58		
8		Apr-09	647000	9.18	50		
9		May-09	707419	9.8	58	606.63	17.53
10		Jun-09	752500	7.27	46	366.91	10.86
11		Jul-09	685968	13.33	76	290.55	8.67
12		Aug-09	663387	11.2	62	125.56	3.73
13		Sep-09	669900	11.34	63	166.94	4.98
14		Oct-09	810065	6.21	42	393.39	11.64
15		Nov-09	819367	7.28	50	721.00	20.26
16		Dec-09	836677	10.76	75	713.00	20.71
17		Jan-10	818290	7.56	52		
18		Feb-10	995593	11.66	97	653.00	21.09
19		Mar-10	847742	20.83	147	831.00	20.27
20		Apr-10	957833	21.28	170		
21		May-10	925452	17.08	132	922.00	31.05
22		Jun-10	885143	57.46	424	135.00	4.43
23		Jul-10	917828	44.35	340	0.00	0.00
24		Aug-10	869321	18.62	135	479.00	16.06
25		Sep-10	868799	16.58	120	578.00	19.58
26		Oct-10	893857	22.12	165	533.00	18.05
27		Nov-10	876285	9.94	73	759.00	25.84
28		Dec-10	866742	34.02	246	638.00	20.79
29		Jan-11	858000	32.76	234	789.00	29.31
30		Feb-11	893607	41.31	308	906.00	36.57
31		Mar-11	690178	44.14	254	770.00	31.24
32		Apr-11	1207781	82.46	831	1.00	0.04
33		May-11	1088803	66.92	608	0.00	0.00
34		Jun-11	964360	39.42	317	0.00	0.00

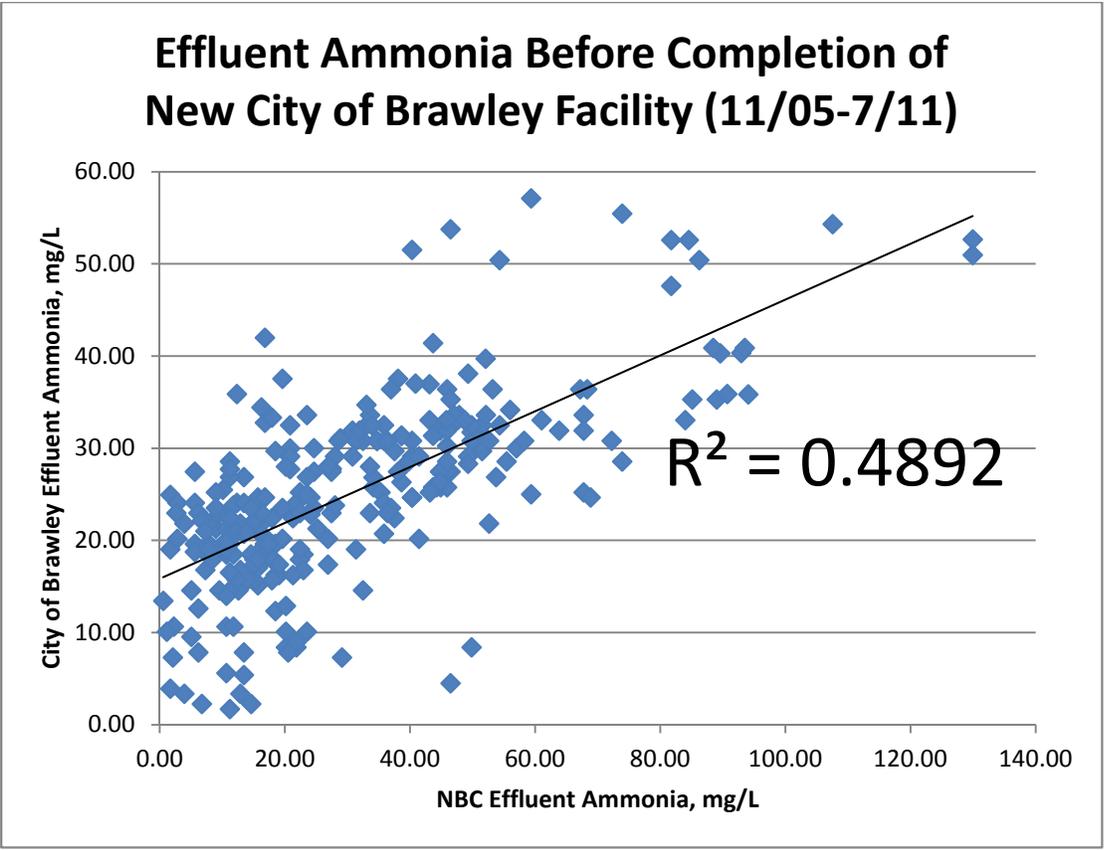
23 If the NBC facility was directly responsible for ammonia violations at the Brawley facility,
24 there would be some expectation that the effluent concentration for the Brawley WWTP would
25 increase in proportion to the National Beef discharges and you would also see similar decreases
26 when National Beef was discharging low concentrations. This correlation does not appear to
27 exist, however. Plotting the ammonia data reveals that some of the highest Brawley ammonia
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1 concentrations occurred during periods when National Beef was producing low effluent
2 ammonia concentrations.



16 When the concentration of ammonia leaving the Brawley WWTP and the National Beef
17 pretreatment facility are plotted against one another, there is very weak correlation. Regression
18 analysis uses data sets and tries to fit those data to a linear function. In order to determine how
19 suitable the linear function is to the data, we examine the distance from the linear prediction
20 that the actual data lies and create a measure of the overall sum of these differences called R^2 .
21 This r-value shows strong correlation when it approaches zero. In this case, two correlations
22 were tested, with before and after the Brawley treatment was reconstructed in 2011 shown.

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Clearly there is not good correlation when the whole data set is examined, but there is weak correlation for the set of data prior to the completion of the new facility. This would be expected when there is little to no degradation of a contaminant occurring though. In this case the correlation is too weak to be confident in its validity, since there are frequent occurrences where the Brawley WWTP influent ammonia concentration is higher than the corresponding National Beef facility effluent.

Q. Is there a correlation between the NPDES violations at the Brawley WWTP and the waste water discharge from the National Beef plant?

A. As noted previously, the toxicity violations at the Brawley WWTP were largely a function of ammonia. Since the Brawley WWTP facility has resolved ammonia treatment issues, it has also eliminated the toxicity violations. Since the Brawley WWTP facility would not have been capable of treating ammonia to concentrations low enough to meet the permit, which was based on levels that usually result in toxicity for the sentinel species, it is unlikely that the facility

1 would have been able to pass toxicity tests without the National Beef facility contributing,
2 meaning these violations do not appear to have occurred in response to operational conditions
3 at the National Beef facility.

4 Lastly, microbiological violations do not appear to have been caused by National Beef's
5 operations. The Brawley facility was using Ultraviolet (UV) light for disinfection of
6 wastewater. UV systems rely on good transmittance of UV light through the wastewater to
7 deactivate microbes. In order to properly operate a UV system, operators need to be aware of
8 the proper operating parameters, so they can complete timely replacements of bulbs and also
9 complete timely cleaning cycles. Additionally it is important that the water treated maintain
10 sufficient clarity to allow effective transmittance.

11 In an inspection report, it was noted that the Brawley facility did not have a complete
12 understanding of the operational requirements of the UV system. It was also noted that there
13 were missing bulbs, ballasts that needed replacement, and that the UV transmittance readings
14 were below the optimum levels. It was also noted that operation of the recirculation system as
15 designed in the Nolte upgrade was producing water clarity issues. Any one of these issues
16 could have caused poor disinfection performance.

17 UV systems require the operator to be very familiar with the operating condition of the bulbs.
18 This typically requires daily inspection to determine the cleanliness of the system. In the
19 inspection report it also noted that the facility was having difficulty paying for replacement
20 components in accordance with the manufacturer's instructions. It is likely that poor
21 operational practices resulted in the microbiological violations.

22 BOD violations would have been solely the result of ineffective aeration at the Brawley
23 WWTP. National Beef never had excessive discharges of BOD from the pretreatment facility
24 during the period in question.
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Dated: September 18, 2014



By:

Nathan Zaugg
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Salt Lake City, Utah 84121
MWH Global

Nathan Zaugg, PE – Global Industrial Wastewater Practice Lead

MWH Experience

6 Years

Total Experience

13 years

Office

Salt Lake City, Utah

Education

MS, Civil and Environmental Engineering, Utah State University

BS, Environmental Engineering, Utah State University

Registrations/Certifications/Training

Professional Engineer – Utah

Summary

Mr. Zaugg has served as a project manager and engineer for a variety of water and wastewater projects for both local and national clients, including municipal, industrial, and oil and gas clients. His primary focus is on process engineering of treatment facilities, but he also has extensive experience in incorporation of the equipment required for those processes into the facility design and specification of this equipment for procurement. Mr. Zaugg's technical expertise includes intake design, sedimentation processes, solids handling and treatment, and process validation. Mr. Zaugg has also had design for all system components associated with Dissolved Air Flotation (DAF), headworks, and anaerobic digestion systems.

Relevant Experience

PCE Remediation Project, Water Well 18 – Salt Lake City Corporation, Salt Lake City, UT

Mr. Zaugg developed the design of a spraying aeration system that pumps water from a well into a large reservoir. The spraying system has a flow rate capacity of 2,300 gpm and will aerate the water to allow the PCE to transfer from the liquid phase to the gas phase. The system operates only with the pressure from the well pump and does not require any other external power.

West Jordan Wastewater Pretreatment Facility – The Dannon Company, West Jordan, Utah

Project Manager for an entirely new 700,000 gallon per day wastewater pretreatment system. Mr. Zaugg led a team of engineers to complete the design of the facility on an extremely abbreviated schedule, permitting the full design and construction of the entirely new 700,000 gallon per day

pretreatment facility within one year. This facility uses an innovative treatment train, employing dissolved air flotation (DAF) and moving bed bioreactors (MBBR) to reduce the influent BOD from sometimes 5,000 mg/L to under 250 mg/L. Additionally, the facility has been designed to permit incorporation of numerous additional process trains, allowing the production facilities to potentially double within the same plant footprint. Mr. Zaugg developed the process design and was responsible for all aspects of project design as the lead design engineer, with significant work performed on mechanical systems, HVAC, and hydraulic designs. Mr. Zaugg also served as resident engineer, helping abbreviate the construction schedule through rapid review and RFI response. As a result, the total time from receipt of permits to initial treatment of water was 114 calendar days.

Boxford Street Wastewater Treatment Facility – Safeway, Commerce, CA

Design Lead for treatment systems. Production improvements at the Boxford food production facility led to a need to improve wastewater pretreatment systems. Mr. Zaugg worked with an engineering team to design collection systems, lift stations, and a pH adjustment system for several different production areas, including dairy and bakery goods.

San Leandro Wastewater Treatment Facility – Safeway, San Leandro, CA

Design Lead for treatment systems. In order to reduce costs associated with wastewater disposal surcharges, Safeway elected to examine alternatives to the existing pretreatment system at their San Leandro milk plant. Mr. Zaugg led a team in the design of a membrane bioreactor system for reducing the surcharge associated with wastewater discharges for this facility. The system design also includes dewatering facilities for the pretreatment system and pH adjustment system.

SM Energy Pilot Treatment Study – Houston, TX

Project Manager for pilot study examining treatability of water produced by petroleum wells in the Eagle Ford formation in Texas for reuse. This water, consisting of both formation water and frac flowback water was tested to determine the constituents of concern in the water that may limit suitability in hydraulic fracturing operations. After identification, a treatment concept was developed that was theorized to provide sufficient removal of the constituents of concern. This treatment system was then tested in a pilot configuration to determine the effectiveness of the treatment system along with the costs of operation. The final treatment configuration utilized DAF followed by filtration systems.

RN Industries, Miscellaneous Services – Duchesne, UT

Technical Advisor on produced water disposal projects. RN Industries operates several produced water disposal facilities in the Uintah Basin in Colorado, Utah, and Wyoming. Mr. Zaugg has provided technical assistance during the design and construction of several of these facilities, including development of new technologies for the treatment of produced water.

Moab, Utah Wastewater Treatment Facility Master Plan Update – City of Moab, UT

Project Manager and Lead Engineer for the evaluation and master planning of the Moab WWTP. This study examined existing treatment processes and structures, evaluated the capacity of each structure, determined the system deficiencies, and provided recommendations on optimizing the

wastewater facility. This included providing multiple process alternatives and also included evaluation of the facility for the impact of potential future nutrient regulations.

Camp Williams Water Supply Pipeline – Utah National Guard

Project manager for the design and construction management of a 2-mile culinary water pipeline supplying Camp Williams with their primary source of water. The pipeline grade changes by over 500 feet from the bottom of the line to the top and crosses beneath a river, three canals, two regional aqueduct systems, a major rail corridor, and a major highway. The design of the pipeline also incorporated updated design features not present on the previous line, such as air blow-off valves, and drainage systems..

Midway Fish Hatchery Wastewater Treatment Systems – DFCM / UDWR, UT

Project Manager of wastewater treatment systems designed to improve management and treatment of wastewater produced during raceway cleaning operations. The treatment systems include tankage and precoat filter to separate fish fecal material from hatchery wastewater without the use of polymer or other chemical that would cause violations of the hatchery's discharge permit. Solids generated by the system can be disposed of by either land application or landfilling with minimal considerations.

Kamas Fish Hatchery Wastewater Treatment Systems – DFCM / UDWR, UT

Project Manager of treatment systems designed to improve management of wastewater produced during raceway cleaning operations. Worked with UDWR personnel to develop a solution that would be flexible and sustainable for hatchery operations. The system designed is a new and innovative solution that will reduce the risk of the facility violating discharge permits.

Chlorine Booster Facility and Chemical Feed Systems – Jordan Valley Water Conservancy District

Project Manager for a new chlorine booster facility for the Jordan Valley Water Conservancy District. This project required evaluation of different methods to deliver disinfectant to water leaving the 100 million gallon terminal reservoir. Initial phases of the project evaluated the use of bulk sodium hypochlorite or on-site generation of hypochlorite, with bulk hypochlorite selected as the disinfectant of choice. Construction of the system was completed on-time and under budget.

CUWCD Water Development Project (CWP) North Shore Terminal Reservoir– CUWCD

Design Engineer of the chlorination facilities associated with the North Shore Terminal Reservoir (NSTR). The system as currently configured will utilize chlorine gas as the disinfectant. However, should future regulations or economics alter the feasibility of continuing to use chlorine gas; the building has been designed to permit the deployment of either bulk hypochlorite or on-site generation of hypochlorite in the future. The system is designed to boost residual chlorine levels in water leaving the NSTR.

City of Brawley NPDES Violations

Violation Number	Date of Violation	Parameter Violated	Permit Limit at Time of Violation	Effluent Concentration, mg/L
1	April, 2010	Monthly Average BOD	45 mg/L	57.6
2	May, 2011	Monthly Average BOD	30 mg/L	36.6
3	June, 2011	Monthly Average BOD	30 mg/L	60.8
4	July, 2011	Monthly Average BOD	30 mg/L	38.3
5	3/5/2011	Weekly Average BOD	65 mg/L	84
6	5/21/2011	Weekly Average BOD	65 mg/L	66
7	5/28/2011	Weekly Average BOD	65 mg/L	96
8	7/2/2011	Weekly Average BOD	65 mg/L	99
9	February, 2007	Average Monthly Ammonia Conc.	12 mg/L	50.82
10	March, 2007	Average Monthly Ammonia Conc.	12 mg/L	18.62
11	April, 2007	Average Monthly Ammonia Conc.	12 mg/L	22.26
12	May, 2007	Average Monthly Ammonia Conc.	12 mg/L	31.81
13	June, 2007	Average Monthly Ammonia Conc.	12 mg/L	33.60
14	July, 2007	Average Monthly Ammonia Conc.	12 mg/L	31.78
15	August, 2007	Average Monthly Ammonia Conc.	12 mg/L	31.36
16	September, 2007	Average Monthly Ammonia Conc.	12 mg/L	28.00
17	October, 2007	Average Monthly Ammonia Conc.	12 mg/L	20.27
18	November, 2007	Average Monthly Ammonia Conc.	12 mg/L	20.30
19	December, 2007	Average Monthly Ammonia Conc.	12 mg/L	18.76
20	January, 2008	Average Monthly Ammonia Conc.	12 mg/L	21.06
21	February, 2008	Average Monthly Ammonia Conc.	12 mg/L	20.02
22	March, 2008	Average Monthly Ammonia Conc.	12 mg/L	19.46
23	April, 2008	Average Monthly Ammonia Conc.	12 mg/L	25.87
24	May, 2008	Average Monthly Ammonia Conc.	12 mg/L	30.18
25	June, 2008	Average Monthly Ammonia Conc.	12 mg/L	21.56
26	July, 2008	Average Monthly Ammonia	12 mg/L	19.26

Violation Number	Date of Violation	Parameter Violated	Permit Limit at Time of Violation	Effluent Concentration, mg/L
		Conc.		
27	August, 2008	Average Monthly Ammonia Conc.	12 mg/L	17.50
28	September, 2008	Average Monthly Ammonia Conc.	12 mg/L	17.36
29	October, 2008	Average Monthly Ammonia Conc.	12 mg/L	16.39
30	November, 2008	Average Monthly Ammonia Conc.	12 mg/L	16.94
31	2/7/2007	Daily Ammonia Conc	12 mg/L	54.32
32	2/14/2007	Daily Ammonia Conc	12 mg/L	55.44
33	2/21/2007	Daily Ammonia Conc	12 mg/L	57.12
34	2/28/2007	Daily Ammonia Conc	12 mg/L	36.4
35	3/7/2007	Daily Ammonia Conc	12 mg/L	14.56
36	3/14/2007	Daily Ammonia Conc	12 mg/L	22.4
37	3/21/2007	Daily Ammonia Conc	12 mg/L	29.12
38	4/4/2007	Daily Ammonia Conc	12 mg/L	25.76
39	4/11/2007	Daily Ammonia Conc	12 mg/L	29.68
40	4/25/2007	Daily Ammonia Conc	12 mg/L	29.12
41	5/2/2007	Daily Ammonia Conc	12 mg/L	31.36
42	5/9/2007	Daily Ammonia Conc	12 mg/L	30.8
43	5/16/2007	Daily Ammonia Conc	12 mg/L	31.92
44	5/23/2007	Daily Ammonia Conc	12 mg/L	31.92
45	5/30/2007	Daily Ammonia Conc	12 mg/L	33.04
46	6/6/2007	Daily Ammonia Conc	12 mg/L	30.8
47	6/13/2007	Daily Ammonia Conc	12 mg/L	33.6
48	6/20/2007	Daily Ammonia Conc	12 mg/L	38.08
49	6/27/2007	Daily Ammonia Conc	12 mg/L	31.92
50	7/3/2007	Daily Ammonia Conc	12 mg/L	32.48
51	7/11/2007	Daily Ammonia Conc	12 mg/L	32.48
52	7/18/2007	Daily Ammonia Conc	12 mg/L	33.6
53	7/25/2007	Daily Ammonia Conc	12 mg/L	28.56
54	8/1/2007	Daily Ammonia Conc	12 mg/L	33.04
55	8/8/2007	Daily Ammonia Conc	12 mg/L	30.8
56	8/15/2007	Daily Ammonia Conc	12 mg/L	32.48
57	8/22/2007	Daily Ammonia Conc	12 mg/L	27.44
58	8/29/2007	Daily Ammonia Conc	12 mg/L	33.04
59	9/5/2007	Daily Ammonia Conc	12 mg/L	27.44
60	9/12/2007	Daily Ammonia Conc	12 mg/L	24.64
61	9/19/2007	Daily Ammonia Conc	12 mg/L	32.48
62	9/26/2007	Daily Ammonia Conc	12 mg/L	27.44
63	10/3/2007	Daily Ammonia Conc	12 mg/L	20.16

Violation Number	Date of Violation	Parameter Violated	Permit Limit at Time of Violation	Effluent Concentration, mg/L
64	10/10/2007	Daily Ammonia Conc	12 mg/L	28
65	10/17/2007	Daily Ammonia Conc	12 mg/L	16.24
66	10/24/2007	Daily Ammonia Conc	12 mg/L	17.92
67	10/31/2007	Daily Ammonia Conc	12 mg/L	19.04
68	11/7/2007	Daily Ammonia Conc	12 mg/L	26.88
69	11/14/2007	Daily Ammonia Conc	12 mg/L	15.12
70	11/19/2007	Daily Ammonia Conc	12 mg/L	20.72
71	11/28/2007	Daily Ammonia Conc	12 mg/L	18.48
72	12/5/2007	Daily Ammonia Conc	12 mg/L	19.6
73	12/12/2007	Daily Ammonia Conc	12 mg/L	20.16
74	12/19/2007	Daily Ammonia Conc	12 mg/L	16.24
75	12/26/2007	Daily Ammonia Conc	12 mg/L	19.04
76	1/2/2008	Daily Ammonia Conc	12 mg/L	19.6
77	1/9/2008	Daily Ammonia Conc	12 mg/L	21.28
78	1/16/2008	Daily Ammonia Conc	12 mg/L	21.84
79	1/23/2008	Daily Ammonia Conc	12 mg/L	21.84
80	1/30/2008	Daily Ammonia Conc	12 mg/L	20.72
81	2/6/2008	Daily Ammonia Conc	12 mg/L	21.28
82	2/13/2008	Daily Ammonia Conc	12 mg/L	19.6
83	2/20/2008	Daily Ammonia Conc	12 mg/L	19.6
84	2/27/2008	Daily Ammonia Conc	12 mg/L	19.6
85	3/5/2008	Daily Ammonia Conc	12 mg/L	18.48
86	3/12/2008	Daily Ammonia Conc	12 mg/L	21.84
87	3/19/2008	Daily Ammonia Conc	12 mg/L	19.6
88	3/26/2008	Daily Ammonia Conc	12 mg/L	17.92
89	4/2/2008	Daily Ammonia Conc	12 mg/L	23.52
90	4/9/2008	Daily Ammonia Conc	12 mg/L	24.08
91	4/16/2008	Daily Ammonia Conc	12 mg/L	22.96
92	4/23/2008	Daily Ammonia Conc	12 mg/L	25.76
93	4/30/2008	Daily Ammonia Conc	12 mg/L	33.04
94	5/7/2008	Daily Ammonia Conc	12 mg/L	26.32
95	5/14/2008	Daily Ammonia Conc	12 mg/L	28.32
96	5/21/2008	Daily Ammonia Conc	12 mg/L	28.56
97	5/28/2008	Daily Ammonia Conc	12 mg/L	37.52
98	6/4/2008	Daily Ammonia Conc	12 mg/L	42
99	6/11/2008	Daily Ammonia Conc	12 mg/L	17.92
100	6/18/2008	Daily Ammonia Conc	12 mg/L	22.4
101	7/2/2008	Daily Ammonia Conc	12 mg/L	19.04
102	7/9/2008	Daily Ammonia Conc	12 mg/L	15.68
103	7/16/2008	Daily Ammonia Conc	12 mg/L	21.28
104	7/23/2008	Daily Ammonia Conc	12 mg/L	20.16

Violation Number	Date of Violation	Parameter Violated	Permit Limit at Time of Violation	Effluent Concentration, mg/L
105	7/28/2008	Daily Ammonia Conc	12 mg/L	20.16
106	8/4/2008	Daily Ammonia Conc	12 mg/L	17.92
107	8/11/2008	Daily Ammonia Conc	12 mg/L	18.48
108	8/18/2008	Daily Ammonia Conc	12 mg/L	16.8
109	8/25/2008	Daily Ammonia Conc	12 mg/L	16.8
110	9/2/2008	Daily Ammonia Conc	12 mg/L	17.36
111	9/8/2008	Daily Ammonia Conc	12 mg/L	17.02
112	9/15/2008	Daily Ammonia Conc	12 mg/L	17.36
113	9/22/2008	Daily Ammonia Conc	12 mg/L	15.68
114	9/29/2008	Daily Ammonia Conc	12 mg/L	18.48
115	10/6/2008	Daily Ammonia Conc	12 mg/L	14.56
116	10/13/2008	Daily Ammonia Conc	12 mg/L	14.59
117	10/21/2008	Daily Ammonia Conc	12 mg/L	19.6
118	10/27/2008	Daily Ammonia Conc	12 mg/L	16.8
119	11/3/2008	Daily Ammonia Conc	12 mg/L	18.48
120	11/10/2008	Daily Ammonia Conc	12 mg/L	16.8
121	11/17/2008	Daily Ammonia Conc	12 mg/L	14.56
122	6/6/2012	Daily Ammonia Conc	3.2 mg/L	8.4
123	Feb-07	Monthly Ammonia Mass	54 lbs/day	1697.39
124	Mar-07	Monthly Ammonia Mass	54 lbs/day	609.47
125	Apr-07	Monthly Ammonia Mass	54 lbs/day	689.58
126	May-07	Monthly Ammonia Mass	54 lbs/day	980.11
127	Jun-07	Monthly Ammonia Mass	54 lbs/day	1052.10
128	Jul-07	Monthly Ammonia Mass	54 lbs/day	1003.07
129	Aug-07	Monthly Ammonia Mass	54 lbs/day	989.82
130	Sep-07	Monthly Ammonia Mass	54 lbs/day	886.10
131	Oct-07	Monthly Ammonia Mass	54 lbs/day	641.47
132	Nov-07	Monthly Ammonia Mass	54 lbs/day	689.89
133	Dec-07	Monthly Ammonia Mass	54 lbs/day	665.75
134	Jan-08	Monthly Ammonia Mass	54 lbs/day	750.88
135	Feb-08	Monthly Ammonia Mass	54 lbs/day	718.82
136	Mar-08	Monthly Ammonia Mass	54 lbs/day	667.84
137	Apr-08	Monthly Ammonia Mass	54 lbs/day	648.04
138	May-08	Monthly Ammonia Mass	54 lbs/day	990.37
139	Jun-08	Monthly Ammonia Mass	54 lbs/day	700.30
140	Jul-08	Monthly Ammonia Mass	54 lbs/day	611.12
141	Aug-08	Monthly Ammonia Mass	54 lbs/day	580.12
142	Sep-08	Monthly Ammonia Mass	54 lbs/day	569.68
143	Oct-08	Monthly Ammonia Mass	54 lbs/day	518.69
144	Nov-08	Monthly Ammonia Mass	54 lbs/day	555.89
145	2/7/2007	Daily Ammonia Mass	590 lbs/day	1808

Violation Number	Date of Violation	Parameter Violated	Permit Limit at Time of Violation	Effluent Concentration, mg/L
146	2/14/2007	Daily Ammonia Mass	590 lbs/day	1775
147	2/21/2007	Daily Ammonia Mass	590 lbs/day	1934
148	2/28/2007	Daily Ammonia Mass	590 lbs/day	1202
149	3/7/2007	Daily Ammonia Mass	590 lbs/day	499
150	3/14/2007	Daily Ammonia Mass	590 lbs/day	753
151	3/21/2007	Daily Ammonia Mass	590 lbs/day	959
152	4/4/2007	Daily Ammonia Mass	590 lbs/day	743
153	4/11/2007	Daily Ammonia Mass	590 lbs/day	988
154	4/25/2007	Daily Ammonia Mass	590 lbs/day	913
155	5/2/2007	Daily Ammonia Mass	590 lbs/day	965
156	5/9/2007	Daily Ammonia Mass	590 lbs/day	966
157	5/16/2007	Daily Ammonia Mass	590 lbs/day	958
158	5/23/2007	Daily Ammonia Mass	590 lbs/day	937
159	5/30/2007	Daily Ammonia Mass	590 lbs/day	2948
160	6/6/2007	Daily Ammonia Mass	590 lbs/day	945
161	6/13/2007	Daily Ammonia Mass	590 lbs/day	1065
162	6/20/2007	Daily Ammonia Mass	590 lbs/day	1181
163	6/27/2007	Daily Ammonia Mass	590 lbs/day	961
164	7/3/2007	Daily Ammonia Mass	590 lbs/day	1029
165	7/11/2007	Daily Ammonia Mass	590 lbs/day	1008
166	7/18/2007	Daily Ammonia Mass	590 lbs/day	1009
167	7/25/2007	Daily Ammonia Mass	590 lbs/day	874
168	8/1/2007	Daily Ammonia Mass	590 lbs/day	1031
169	8/8/2007	Daily Ammonia Mass	590 lbs/day	871
170	8/15/2007	Daily Ammonia Mass	590 lbs/day	986
171	8/22/2007	Daily Ammonia Mass	590 lbs/day	822
172	8/29/2007	Daily Ammonia Mass	590 lbs/day	1050
173	9/5/2007	Daily Ammonia Mass	590 lbs/day	883
174	9/12/2007	Daily Ammonia Mass	590 lbs/day	797
175	9/19/2007	Daily Ammonia Mass	590 lbs/day	981
176	9/26/2007	Daily Ammonia Mass	590 lbs/day	860
177	10/3/2007	Daily Ammonia Mass	590 lbs/day	592
178	10/10/2007	Daily Ammonia Mass	590 lbs/day	890
179	10/17/2007	Daily Ammonia Mass	590 lbs/day	493
180	10/24/2007	Daily Ammonia Mass	590 lbs/day	547
181	10/31/2007	Daily Ammonia Mass	590 lbs/day	629
182	11/7/2007	Daily Ammonia Mass	590 lbs/day	854
183	11/14/2007	Daily Ammonia Mass	590 lbs/day	543
184	11/19/2007	Daily Ammonia Mass	590 lbs/day	705
185	11/28/2007	Daily Ammonia Mass	590 lbs/day	627
186	12/5/2007	Daily Ammonia Mass	590 lbs/day	693

Violation Number	Date of Violation	Parameter Violated	Permit Limit at Time of Violation	Effluent Concentration, mg/L
187	12/12/2007	Daily Ammonia Mass	590 lbs/day	624
188	12/19/2007	Daily Ammonia Mass	590 lbs/day	576
189	12/26/2007	Daily Ammonia Mass	590 lbs/day	580
190	1/2/2008	Daily Ammonia Mass	590 lbs/day	652
191	1/9/2008	Daily Ammonia Mass	590 lbs/day	847
192	1/16/2008	Daily Ammonia Mass	590 lbs/day	752
193	1/23/2008	Daily Ammonia Mass	590 lbs/day	736
194	1/30/2008	Daily Ammonia Mass	590 lbs/day	786
195	2/6/2008	Daily Ammonia Mass	590 lbs/day	701
196	2/13/2008	Daily Ammonia Mass	590 lbs/day	716
197	2/20/2008	Daily Ammonia Mass	590 lbs/day	768
198	2/27/2008	Daily Ammonia Mass	590 lbs/day	654
199	3/5/2008	Daily Ammonia Mass	590 lbs/day	613
200	3/12/2008	Daily Ammonia Mass	590 lbs/day	716
201	3/19/2008	Daily Ammonia Mass	590 lbs/day	682
202	3/26/2008	Daily Ammonia Mass	590 lbs/day	613
203	4/2/2008	Daily Ammonia Mass	590 lbs/day	814
204	4/9/2008	Daily Ammonia Mass	590 lbs/day	775
205	4/16/2008	Daily Ammonia Mass	590 lbs/day	762
206	4/23/2008	Daily Ammonia Mass	590 lbs/day	881
207	4/30/2008	Daily Ammonia Mass	590 lbs/day	1036
208	5/7/2008	Daily Ammonia Mass	590 lbs/day	792
209	5/14/2008	Daily Ammonia Mass	590 lbs/day	879
210	5/21/2008	Daily Ammonia Mass	590 lbs/day	865
211	5/28/2008	Daily Ammonia Mass	590 lbs/day	1180
212	6/4/2008	Daily Ammonia Mass	590 lbs/day	1282
213	6/11/2008	Daily Ammonia Mass	590 lbs/day	557
214	6/18/2008	Daily Ammonia Mass	590 lbs/day	687
215	7/2/2008	Daily Ammonia Mass	590 lbs/day	610
216	7/9/2008	Daily Ammonia Mass	590 lbs/day	426
217	7/16/2008	Daily Ammonia Mass	590 lbs/day	616
218	7/23/2008	Daily Ammonia Mass	590 lbs/day	594
219	7/28/2008	Daily Ammonia Mass	590 lbs/day	610
220	8/4/2008	Daily Ammonia Mass	590 lbs/day	593
221	8/11/2008	Daily Ammonia Mass	590 lbs/day	567
222	8/18/2008	Daily Ammonia Mass	590 lbs/day	455
223	8/25/2008	Daily Ammonia Mass	590 lbs/day	579
224	9/2/2008	Daily Ammonia Mass	590 lbs/day	598
225	9/8/2008	Daily Ammonia Mass	590 lbs/day	556
226	9/15/2008	Daily Ammonia Mass	590 lbs/day	575
227	9/22/2008	Daily Ammonia Mass	590 lbs/day	488
228	9/29/2008	Daily Ammonia Mass	590 lbs/day	621
229	10/6/2008	Daily Ammonia Mass	590 lbs/day	401

Violation Number	Date of Violation	Parameter Violated	Permit Limit at Time of Violation	Effluent Concentration, mg/L
230	10/13/2008	Daily Ammonia Mass	590 lbs/day	487
231	10/21/2008	Daily Ammonia Mass	590 lbs/day	631
232	10/27/2008	Daily Ammonia Mass	590 lbs/day	510
234	11/3/2008	Daily Ammonia Mass	590 lbs/day	575
235	11/10/2008	Daily Ammonia Mass	590 lbs/day	586
236	11/17/2008	Daily Ammonia Mass	590 lbs/day	455

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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

PREFILED TESTIMONY OF JIM
STAHL

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National Beef California, LP

1 Q: Tell us who you are and what you currently do for a living.

2 A: My name is Jim Stahl and I am the Vice President and Senior Technical
3
4 Advisor for MWH Global. Prior to working at MWH, I was the Chief Engineer
5 and General Manager for the Los Angeles County Sanitation Districts. My
6 current resume is attached hereto as Attachment A.

7
8 Q: Describe your educational background.

9 A: I received my BSCE from Loyola University Los Angeles in 1965. I went
10 on to obtain my Masters of Science from Stanford University in 1968. I am a
11 Registered Professional Engineer in the State of California. In addition, I am a
12 Board Certified Environmental Engineer as designated by the American Academy
13 of Environmental Engineers and Scientists. Finally, I am a member of the
14 National Academy of Engineering. The National Academy of Engineering is
15 comprised of 200 peer elected members out of 2,000,000 engineers in the United
16 States to provide independent advice to the federal government on matters
17 involving engineering and technology.
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21 Q: Describe your professional experience.

22 A: I have approximately 50 years of experience in the environmental
23 engineering profession. My major areas of expertise and experience are in water
24 and wastewater treatment, water reclamation, reuse and solid waste management.
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1 I was employed by the Los Angeles County Sanitation District ("LACSD")
2 for 38 years. Over the course of my employment at the Los Angeles County
3 Sanitation District I progressed through the organization in several different jobs.
4

5 Q: What were you asked to do in this case?

6 A: I was asked to review the engineering, design and operation of the
7
8 Brawley, California waste water treatment plant ("Brawley WWTP") for the time
9 period at issue in the present proceeding. In addition, I was asked to review the
10 engineering, design and operation of the waste water pretreatment system at the
11 beef plant both before and during the ownership of the plant by National Beef
12 ("National Beef WWPS"). Finally, I was asked to form opinions regarding the
13 cause of the violations of the NPDES permit at the Brawley WWTP that are the
14 subject of the Complaint in this matter.
15
16

17 Q: Did you complete the foregoing tasks?

18
19 A: I did.
20

21 Q: Describe what you observed regarding the engineering, design and
22 operations of the Brawley WWTP.
23

24 A: In order to perform this task I reviewed a multitude of documents,
25 including the Regional Board and EPA (Tetra-Tech) inspection reports, Regional
26 Board permits, Regional Board Complaints, engineering drawings, and
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28

1 performance data regarding the Brawley WWTP and visited the Brawley WWTP
2 on September 16, 2014. All of the documents I reviewed and relied upon in
3 forming the opinions I express in this matter are included in the Evidence
4 Submission as Exhibits.
5

6 Initially, I think it is important to place the Brawley WWTP system in
7 historical perspective. It is clear from the earliest documents I reviewed,
8 particularly the findings and historical accounts in Exhibits 1 through 3 of the
9 Administrative Civil Liability Complaint R7-2014-0041 (the "Complaint"), that
10 the City of Brawley ("Brawley") faced compliance issues as early as 1995, before
11 the beef plant was constructed or began discharging to the Brawley collection
12 system.
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16 The documents show that there were frequent changes in engineering
17 advisors and funding challenges at the Brawley WWTP. (Complaint Exhibit 2).
18 The treatment process at the Brawley WWTP prior to 2000 consisted of bar
19 screens, grit removal, two primary clarifiers, two anaerobic digesters, 5 ponds (40
20 -47 million gallons on approximately 13 Acres); 2 aerated + 3 stabilization ponds
21 and sludge drying beds. (See Nolte Diagrams, attached hereto as Attachments 2
22 through 4; Defendant Exhibit 50; Complaint Exhibit 1). This treatment scheme
23 is similar to systems I managed for LACSD in the communities of Palmdale and
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1 Lancaster, California. Neither of those systems was designed to nitrify
2 consistently and the operating results, while permit compliant, bear this out.
3

4 The Brawley WWTP has historically been pond or lagoon oriented.
5 WWTP plant layouts are shown in Figures 1 and 2, attached to Exhibit 1 of the
6 Complaint. While aerated, all information indicates the ponds were facultative in
7 operation because of the accumulation of solids in the bottom depths. This
8 appeared to be particularly applicable to ponds A1, A2 and S1. In 2002 and 2003
9 improvements to the Brawley WWTP added aeration capacity in the ponds
10 resulting in the following totals: Ponds A1 and A2 each contained 6 aerators of
11 15-HP each; Ponds S1 and S2 each contained 4 aerators of 30-HP each; and, Pond
12 S3 contained 2 Solar Bee mixers. The placement and use of aerators varied
13 greatly in the Brawley WWTP ponds as noted in the EPA – TetraTech (2005)
14 and Colorado River Regional Water Quality Control Board ("CRRWQCB") (*See*
15 Defendant Exhibits 50 and 456). A third clarifier and an effluent UV disinfection
16 system were also added as part of the 2002 AND 2003 upgrade. The total work
17 resulted in CRRWQCB permit authority being increased to 5.9 mgd after the
18 expansion was completed. (*See* Defendant Exhibit 50).
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24 At approximately the same time as the foregoing improvements, the City
25 concluded based on field assessments, to cease using the improved primary
26 treatment system because the existing steel egg shaped digesters were corroded
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1 and beyond economical repair. (See Defendant Exhibits 50 and 456; Complaint
2 Exhibit 1-4). As a result, all incoming solids were routed to the ponds. This did
3 not bode well for future treatment and solids management because it shifted
4 solids removal to pond cleaning. Even assuming this was accomplished on a
5 regular schedule, storage of the solids in the bottom of the ponds between
6 cleaning reduced the volume available for liquid treatment.
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9 The record is clear that the Brawley WWTP effluent was routinely
10 exceeding toxicity standards throughout this time. (Complaint Exhibits 1-4).
11 TIE studies conducted by Brawley showed ammonia was the cause of the
12 toxicity. Elimination of such toxicity demanded that a treatment system be
13 designed and operated in a fashion that could achieve a high level of nitrification
14 and the required ammonia reduction. All involved agreed this was could not be
15 accomplished with the then existing pond system, including the added aeration
16 capacity, rearrangement of aerators and internal pond baffling at the Brawley
17 WWTP. (Complaint Exhibits 1-4; Defendant Exhibit 50). As a result, the
18 Brawley WWTP was violating its NPDES permit as a result of the inability of the
19 plant to effectively treat ammonia prior to the beef plant ever being built or
20 discharging any wastewater.
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26 In overview, the Brawley WWTP system prior to the Nolte implementation
27 had a total pond volume of 40 million gallons based on a cited value from the
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1 CRRWQCB September 2007 Inspection Report (Defendant Exhibit 50) and 47
2 million gallons based on a Nolte report (Attachment 2). If it is assumed the total
3 pond volume was 45 million gallons, at the design flow of 5.9 mgd and all pond
4 volume is available for treatment the hydraulic or liquid retention time (HRT)
5 would be 7.6 days. Since there are no facilities available for biological solids
6 return this would also be the value of the solids retention time or mean cell
7 residence time (MCRT). At flow of 4 mgd the $HRT + MCRT = 11.3$ days. It has
8
9 been my experience that this is a marginal value to achieve a year round
10 consistent and high degree of nitrification in a lagoon or pond system.
11
12 Furthermore these calculated values assume perfect mixing, no short-circuiting
13 and no accumulation of solids in the pond bottom. It is unrealistic to assume these
14 conditions could be achieved in the Brawley WWTP, or for that matter any other
15 similar lagoon/pond system. In addition you would need to separate the
16 biological solids responsible for nitrification before discharging to meet Total
17 Suspended Solids ("TSS") and Biochemical Oxygen Demand ("BOD") requirements.
18
19 As a result, prior to the improvements to the Brawley WWTP that were
20 constructed in 2006 by Nolte Engineering discussed in detail below, the Brawley
21 WWTP was unable to achieve the necessary nitrification to treat ammonia
22 because of the design and operation of the plant. The plant influent had no
23 inhibitory effect on the Brawley WWTP's ability to treat ammonia because the
24 Brawley WWTP had no ability to treat ammonia to begin with. The cause of the
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1 NPDES permit violations related to ammonia under these conditions at the plant
2 was the result of the Brawley WWTP's design and operation.

3
4 To address the nitrification need the Brawley enlisted the services of Nolte
5 Engineering as early as 2001. In that year a draft preliminary engineering report
6 was prepared by the City of Brawley in conjunction with Nolte Engineering for
7 the Border Environment Cooperation Commission entitled Waste Water
8 Treatment Facility Ammonia Removal and Solids Handling (Defendant Exhibit
9 442) which proposed three alternatives to accomplish nitrification and
10 denitrification. Based on the information contained in the legal filing of the City
11 of Brawley (City of Brawley v Nolte Associates Case No. ECU04880 filed Sept
12 Sep 03 2009 in Imperial County Superior Court), a final report was prepared with
13 the inclusion of six alternatives (A – E) for the reduction of plant influent
14 ammonia levels of 40 – 100mg/l to less than 1mg/l in the effluent. Brawley chose
15 to implement Alternative E, for which a process flow diagram produced by Nolte
16 Engineering is shown in Attachments 3 and 4. In the Brawley letter to the
17 CRRWQCB of Jan 30, 2007, which is contained in Exhibit 16 of the Complaint it
18 is stated that Brawley chose this solution to introduce substantial recycling into
19 the WWTP process and continue to utilize lagoons as the main treatment process.
20 “This will allow larger quantities of nitrifying and denitrifying bacteria to be
21 present at the beginning of the treatment processMCRT will be significantly
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1 increased.” (Complaint Exhibit 16). The improvements were designed by Nolte
2 Engineering and placed in service in the August – September 2006 timeframe.
3 According to the above referenced Court filing by the City of Brawley, “Once
4 online, Nolte’s ammonia removal process resulted in minimal efficacy and 1-2
5 mg/l reduction, but nowhere near the less than 1mg/l guaranteed by Nolte and
6 Miller”. The data shown in Table 2 of Exhibit 45 of the Complaint fully support
7 this conclusion. It is of value to the present proceeding to note that nowhere in
8 any of the Nolte Engineering reports, design documents or in the Brawley Court
9 filing is there mention or reference of pass through or interference or toxicity
10 caused by the National Beef discharge and the ammonia contained therein.

14 I was not present to see the Nolte Engineering system in operation, but in
15 consideration of all the information I reviewed and summarized above, the
16 absence of nitrification in the Nolte Engineering treatment scheme was the result
17 of a lack of strategically located aeration capacity, hydraulic short circuiting,
18 sufficient dissolved oxygen controls and clarification capacity that would allow
19 for separation of cultured biomass (nitrosomonas and nitrobacter) and the return
20 of the separated solids for re-activation (activated sludge) in the aerated ponds.
21 This is not insight through hindsight. I strongly believe any experienced water
22 quality design professional should have come to this conclusion at the time of the
23 design. The previously referenced 2007 CRRWQCB Inspection report essentially
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1 came to the same conclusion while also observing marginal operation and
2 maintenance practices.

3
4 Exhibit 16 of the Complaint contains a summary of the Nolte Engineering
5 project and contains no mention of clarification, solids separation and return of
6 the requisite settled, concentrated viable mass of nitrifying organisms. There is
7 emphasis on the introduction of substantial recycling, but without a substantial
8 population of activated organisms, this offers minimal if any potential for
9 achieving the required high degree of nitrification. A process analysis and
10 expected performance diagram along with a spreadsheet does show and list
11 clarification but with absolutely no return activated sludge flow. Further evidence
12 of the lack of attention to detail as to clarification and return solids or biological
13 mass flow can be found in an examination of the Attachment 2, 3 and 4. All are
14 Nolte Engineering construction contract drawings. Attachment 2 is the overall
15 site plan and Attachments 3 and 4 sets forth the Process Flow Diagrams. Neither
16 Attachment details or calls attention to Stage 3 (S-1C) of Lagoon 2, where
17 aeration has been omitted to achieve quiescent conditions and clarification of the
18 settled and subsequent return of the biomass to the aeration zones. One can note
19 the location of the recycle pump station at the southeast corner of the pond. Yet
20 there seems to be no provision for efficient collection of the settled biomass so
21 that it is conveyed to the suction end of the Recycle Pump Station. Absent such
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1 an arrangement, the liquid return would invariably be devoid of nitrifying
2 organisms and you will not be able to increase the MCRT to a sufficient level to
3 achieve consistent nitrification. It was not surprising that the system installed
4 based upon the Nolte Engineering recommendation was completely ineffective in
5 treating ammonia. By the end of 2007, the Brawley shut down the Nolte system.
6

7
8 In October 2007 Brawley approved a contract with Lee & Ro for
9 improvements to achieve nitrification at its WWTP. (See Attachment 5). The
10 recommended project was a fundamentally sound activated sludge based system
11 that made use of the primary tanks abandoned in 2002. Rather than build new
12 aeration basins the A1 pond and part of A2 was used to incorporate a Parkson –
13 Biolac aeration system. The remainder of A2 area was for required secondary
14 clarifiers. A simplified and detailed Process Flow Diagram are shown in Exhibit
15 986 (Figure 1.1 Lee & Ro Brawley Local Limits Study Dec 2013) (Complaint
16 Exhibit 1, Order R7-2010-002, Flow Schematic).
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20 With this system all solids are now directly controlled on a routine basis,
21 recycled to build biomass, wasted as appropriate, thickened (old primary), stored
22 in a holding tank (old primaries), centrifuged and solar dried. In the aeration
23 basins fine bubble diffusers are suspended from the BioFlex® floating aeration
24 chains. Brawley is also attempting to achieve denitrification with the use of the
25 Parkson “Wave Oxidation Process.” This involves sequencing and timed
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1 shutdown of air headers to achieve alternating oxic –anoxic zones and save
2 energy.

3
4 The Lee and Ro designed system was placed in operation July 2011 and
5 was immediately successful in achieving nitrification. This can be seen in
6 examining the data in Table 3 of Exhibit 45 of the Complaint. The same data is
7 presented graphically in Defendant Exhibit 285 which is a draft CRRWQCB
8 document of Jan 25, 2013 “Staff Report for City of Brawley ACL R7-2013-
9 0028”. Page 9 of Defendant Exhibit 285 shows the monthly effluent constituent
10 (BOD, TSS, Total Ammonia) concentrations for December 2006 through
11 December 2012. This graph was not included in the Complaint but is most useful
12 to show the relatively short timeframe required to achieve nitrification. It should
13 also be noted that improvement in effluent quality was also achieved in BOD and
14 TSS removal. The same pattern of excellent and almost immediate nitrification
15 can be seen in an examination of the weekly samples of effluent ammonia
16 concentration listed in Table 2 of the aforementioned Exhibit 45 to the Complaint.
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22 For the weekly samples taken the two weeks prior to startup of the Lee &
23 Ro system in July 2011 the ammonia removal efficiency (Influent ammonia –
24 Effluent ammonia, all divided by the Influent ammonia) was 9% (7/6/2011) and -
25 4% (7/11/2011). Immediately after startup of the Lee & Ro system the ammonia
26 removal efficiency was 70% (7/18/2011); 67% (7/25/2011); and 95% (8/1/2011).
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1 Ammonia removal efficiency in the 90+% removal range remains today. Bottom
2 line: When a properly designed and operated treatment system was placed in
3 service at the Brawley WWTP the requisite treatment and nitrification was
4 attained.
5

6 In my opinion the Lee & Ro system startup experience clearly
7
8 demonstrates there was no inhibition, interference or pass through caused by the
9 quality or strength of the Brawley WWTP influent. Specifically, National Beef
10 did not cause the violation of the Brawley WWTP NPDES permit for purposes of
11 interference or pass through. The quality of the influent was not an issue.
12

13 To further add to the evidence for such it should be noted that the Brawley
14 startup team transported activated sludge seed from another Bio-lac plant in the
15 Coachella Valley. This sludge was certainly not acclimated to the Brawley
16 influent constituents, including National Beef, yet it immediately achieved a
17 sustainable growth rate without indication of substandard biological activity or
18 treatment deficiency.
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21 Much has been alleged about the toxicity or interference characteristics of
22 the National Beef effluent on the Brawley WWTP ability to achieve ammonia
23 compliance. However, in the CRWQCB complaint against the Brawley it was
24 concluded in Finding No. 18 that “Dischargers WWTPs did not have the
25 necessary capacity to properly treat domestic loads from existing sewer users let
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1 alone increased ammonia loads from new industrial users, including National
2 Beef Company, even with upgrades to flow and treatment capacity in response to
3 TSO 99-054 and CAO R7-2004-0079." As discussed previously, I completely
4 agree that the 2002/2003 upgrades and the Nolte Engineering system could not
5 properly process existing domestic loads. The problem was not National Beef's
6 discharge but the lack of an effective Brawley treatment system. The startup
7 results and continuing success of the Lee & Ro system prove this point. In
8 Finding No. 42 of the ACL for the City of Brawley it is stated that " the
9 discharge from NBC into the Brawley WWTP consistently caused Pass Through
10 and/or interference from June 2006 until approximately July 2011." How can you
11 interfere with a system that does not exist? When the system does exist (July
12 2011) such that interference could occur, there is no interference as shown by the
13 above referenced performance data.

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19 Interference with the attainment of nitrification is a possibility if the
20 ammonia concentration in the plant influent is high enough to produce an
21 inhibitory environment. There have been many studies to identify such levels of
22 ammonia. Two often cited works are : Ines D. S. Henriques, et al (2007)
23 Activated Sludge inhibition by Chemical Stressors – A Comprehensive Study.
24 Water Environment Research, Volume 79, 940 - 951 and Y.H. Ding, et al (2014)
25 Inhibition of the Activities of Activated sludge in a Sequencing Batch Reactor by
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1 High-Strength Ammonium Nitrogen, 52, 2792 – 2798. Both works concluded that
2 the NH₄-N concentration would generally need to be in 100mg/l or higher range
3 to produce a noticeable effect in nitrification. Even in those situations the work by
4 Ines demonstrated the biomass adapted and recovered quickly. For the Brawley
5 WWTP the ammonia concentration in the weekly plant influent samples averaged
6 approximately 26 mg/l for the 2006 through early 2014. The high sample was
7
8 approximately 68.88 mg/l on 10/18/2006 and the low was 9.96 on 2/21/12. These ammonia
9 concentrations are certainly below inhibitory levels as reported in the literature.
10
11

12 In consideration of all of the above discussion I conclude that neither the
13 National Beef discharge nor the eventual amalgamation with the other discharges
14 to the Brawley collection system resulted in influent Brawley WWTP ammonia
15 concentrations at a level that would cause pass through or interference and
16 prevent the attainment of nitrification and compliance with ammonia discharge
17 standards. The problem was the lack of a suitable wastewater treatment system
18 not in the quality of the influent. In such a case the EPA guidance document on
19 Interference and Pass Through clearly states that “If a malfunction or improper
20 operation by the POTW, rather than an industrial user's discharge, causes the
21 POTW's noncompliance with its NPDES permit or sludge requirements,
22 interference and/or pass-through are not occurring.”
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1 There was also a claim in Exhibit 45 to the Complaint that the National
2 Beef discharge caused nitrogen build up in the City WWTP such that some of the
3 inorganic nitrogen in the biomass and sludge that settled in the ponds was
4 released again exacerbating the alleged problem. I was unable to find any analysis
5 in the submission of the Prosecution team to support this claim. Our analysis of
6 the data, however, concludes there was no significant impact from any such build
7 up or release, if any release at all. As previously pointed out, most of the ponds
8 (A1, A2 and most probably S1) as operated prior to the current Lee & Ro system
9 were largely facultative in nature. As such, there can be release of constituents
10 from the lower depth to the stratified upper anoxic and aerobic zones. There is no
11 evidence that this event occurred.
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16 To address this question reference is made to the previously discussed
17 effluent data before and after start-up of the Lee and Ro system. The data was
18 collected at the official effluent sampling point prior to the UV system. It is our
19 understanding that out of concern that the A/S system may experience start-up
20 problems Brawley continued discharging the effluent from the secondary
21 clarifiers through the remaining S1, S2 and S3 ponds operated in series, for a
22 period of several weeks. At the end of that time, the effluent was rerouted
23 directly to the sampler, bypassing the ponds. The effluent data clearly shows that
24 after initial startup the ammonia effluent constituent concentrations quickly
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1 decreased to relatively low and stable levels, without any indication of fluctuation
2 or increase from a “re-release” component. This occurred while the Lee & Ro
3 plant effluent was flowing through the ponds, which most certainly were
4 facultative and contained previously deposited influent material.

6 Q: Describe what you observed regarding the engineering and operation of the
7 waste water pretreatment system ("WWPS") at the National Beef plant.
8

9 A: I reviewed a multitude of documents, including the HR Green Report,
10 inspection reports, CRRWQB and Brawley correspondence, CRRWQCB
11 Complaints, engineering drawings, performance data and personally inspected the
12 facility on June 4, 2014. While ammonia treatment and compliance was the
13 major issue of concern, I also examined the control of TSS and BOD.
14
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16
17 National Beef operated a beef slaughter and rendering facility processing
18 approximately 2,400 head of cattle per day. Brawley Beef owned and operated
19 the facility from October 2001 until National Beef purchased the business June 2,
20 2006. A detailed schematic of the National Beef WWPS is shown in Defendant
21 Exhibit 10, HRG Figure 1 Overall Process Flow. This Exhibit essentially depicts
22 the system as it exists today. Based on the documents and actions I was made
23 aware of through National Beef field representatives, particularly Bud Ludwig,
24 many National Beef improvements were made to the original system inherited
25 from Brawley Beef. Some of the work was the result of insights and observations
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1 made in conjunction with Brawley, HR Green and the CRRWQCB staff. To
2 obtain an independent assessment of the National Beef WWPS endeavors to
3 continually improve effluent quality the the consulting firm HR Green (HRG)
4 was engaged in September 2012. They produced a preliminary report on their
5 findings dated April 2013. (Defendant Exhibit 10).
6

7
8 The fundamental WWPS treatment facility consists of a series of ponds,
9 with attendant screening, pumps, DAF units, aeration, SAF and a belt filter all
10 coordinated for treatment of BOD, TSS and ammonia. The treated effluent is
11 discharged to the Brawley collection system. Wastewater flow going to the
12 Brawley WWTP is currently about 1.4 mgd but has been as high as
13 approximately 1.7 mgd.
14

15
16 The lead unit in the WWPS is an anaerobic pond (Pond 1 – P1). It receives
17 the treated flow from upstream DAF units as well as flow from cattle pen misters
18 and pen washings. P1 is covered to allow collection of the generated methane gas
19 which is then used to fuel an onsite boiler.
20

21
22 National Beef opened the discharge area of P1 in August 2012, found
23 accumulated grease, implemented cleaning, installed a new effluent pipe to better
24 control discharge and a DAF unit to prevent grease discharges to the downstream
25 aerobic Pond 2 (P2). As in most anaerobic ponds, grease accumulation is a
26 challenge, but in my opinion the benefits of converting as much of the incoming
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1 BOD as possible to a useful end product such as methane gas for green energy
2 production is a most worthwhile endeavor. In general I believe the industrial and
3 municipal wastewater treatment industry is implementing more anaerobic
4 processes in their schemes for liquid and solids handling because of the inherent
5 low solids production and energy production potential.
6

7
8 The underflow or effluent from the DAF unit receiving the P1 discharge is
9 sent to P2. HRG data analysis for the period May 2011 to August 2012 showed
10 the average P2 influent BOD at 1780mg/l and TKN at 137mg/l. The peak values
11 of BOD were at 3253 mg/l and TKN at 207 mg/l. Considering the nature of the
12 P1 anaerobic operation I would expect that a significant portion, if not almost all
13 of the TKN, is in the form of ammonia. As shown in Attachments 6 and 7 earlier
14 P2 ammonia influent data from February 2007 to August 2007 showed an average
15 ammonia concentration of approximately 140 mg/l.
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19 P2 has a hydraulic retention time of approximately 1.7 days at a flow of 1.7
20 mgd. Aeration is currently provided by a combination of surface aerators
21 (8@40HP + 5@75HP) and 4 floating air headers, each having 10 suspended fine
22 bubble diffusers. The P2 design and operating data that HRG examined and I
23 confirmed, yielded an organic loading rate of approximately 0.3 BOD/MLVSS ,
24 MCRT – SRT (13days min) and MLSS (approx. 3,000 - 4,000mg/l) all of which
25 would combine to support nitrification. The HRG report stated that additional
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1 aeration would be necessary for consistent complete nitrification. However my
2 experience and examination of National Beef performance data since the National
3 Beef addition in September 2012 of a DAF unit between P1 and P2 and
4 supplemental aeration in the form of diffuser chains would indicate that such
5 aeration might not be necessary. This work was initiated and completed by
6 National Beef staff prior to the completion of the HRG report.
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9 The effluent from P2 flows to P3. P3 was originally designed and operated
10 as a polishing/settling pond. Through a series of effective modifications by the
11 National Beef staff it is now configured and operates as a three compartment
12 pond incorporating clarification (3A) of the mixed liquor from P2 and pumping of
13 the settled solids to wastage or return to P2 aeration. The clarified liquid flows to
14 compartment 3B and then pumped to a suspended air flotation (SAF) unit for
15 final polishing and discharge to the Brawley collection system. Compartment 3C
16 contains liquid for hydraulic and structural stability among the compartments, but
17 is not part of the routine pond operating system. However it can be triggered for
18 service to receive TSS slugs through diversion controls utilizing TSS probes.
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22 Figure 5 from the HR Green report (See Fig 5 of Defendant Exhibit 10) illustrates
23 the composite P3 treatment scheme. Residual solids from the various segments of
24 the P1/P2/P3 treatment system are processed through a belt filter and transported
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1 off-site for land recycling. The solids from the pre P1 DAF operation are sent for
2 composting.

3
4 I previously referred to the input of HR Green, an engineering consulting
5 firm commissioned by the City in September 2012 to examine the National Beef
6 WWPS to recommend any treatment system needs to meet the pretreatment
7 program requirements that would be approved in the future. The report was
8 completed in April 2013. (Defendant Exhibit 10). HRG recommended five
9 improvements: 1) improve the existing DAF with respect to aeration, floatables,
10 settle-able solids and consistent operation; 2) install permanent DO probes in
11 Pond 2; 3) add four new TSS probes to control and alarm of TSS slugs; 4)
12 automate Pond 3A/3B level control to maintain a consistent drop over the weir;
13 and 5) automate TSS slug diversion. All of these recommendations have been
14 implemented by the National Beef staff. Furthermore, HRG set forth several
15 alternatives for consideration in improving Pond 1. They were, 1) remediate or
16 dredge Pond 1; 2) replace Pond 1; or 3) installation of a new enhanced anaerobic
17 contact digester. National Beef, in consultation with HRG, the City of Brawley
18 and the CRRWQCB was in the process of evaluating these alternatives, including
19 time impacts associated with CEQA when National Beef made the decision to
20 close its Brawley facility. It is my understanding that National Beef continues to
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1 monitor the solids balance in P1 and is prepared to take appropriate action as to
2 any required cleaning.

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4 In my overall judgment the National Beef WWPS has evolved positively
5 over time as a result of a proactive management team and staff dedicated to
6 achieving compliant water quality through process additions, rehabilitation steps
7 and improved operating techniques. I found the facility to meet an average
8 industry standard of care. The path has not been straight forward but the records
9 and data I examined presented a corporate willingness to address the facts and
10 work the problem in a timely and cost-effective manner.
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14 I believe an examination of the National Beef WWPS effluent data, with
15 emphasis on ammonia concentration illustrates my reasoning in coming to this
16 conclusion. Attachments 8 and 9 show the monthly average concentration of
17 ammonia in the National Beef WWPS effluent. The data comes from Table 4 of
18 Exhibit 45 of the CRRWQCB Prosecution Team Evidence filing. I fully realize
19 that the old Brawley discharge ordinance contained a weekly 24 hour composite
20 limit of 30 mg/l while the newly approved pretreatment ordinance has ammonia
21 limits of 30mg/l monthly average and 50mg/l instantaneous. Nonetheless the
22 intent of Attachment 8 and 9 is to illustrate trends and discussion of National Beef
23 actions taken to address compliance and perspective as to the achieved effluent
24 ammonia concentration.
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1 It can be seen since taking over the operation from Brawley Beef in June
2 2006 through the early months of 2010, effluent ammonia concentration was on a
3 meaningful track of improvement. As previously noted, the effluent ammonia
4 concentration from P1 averaged approximately 140mg/l, so as one examines the
5 final effluent ammonia concentration from the National Beef WWPS it can be
6 seen that a significant degree of nitrification was occurring throughout the
7 operation of the facility during this almost four year time span. There were
8 upward excursions along the way, but National Beef put forth a concerted effort
9 to correct these issues.

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13 There was an increase in effluent ammonia in the latter part of 2006 that
14 led to National Beef action to install a baffle curtain in P3 and subsequent
15 initiation of P3 dredging as well as boosting of aeration HP in P2. The positive
16 end result was that for the 32 month period from February 2007 through May
17 2010, the monthly average plant effluent ammonia concentration was below 30
18 mg/l and averaged 21.3 mg/l. In this period 80% of the monthly averages were
19 less than 30 mg/l. In fact for the 24 consecutive month period from June 2008
20 through May 2010 the monthly average ammonia concentration never exceeded
21 30mg/l and averaged 11.7mg/l. From the perspective of May 2010, it was
22 reasonable to assume for ammonia compliance that the National Beef WWPS was
23 on a most positive track. There were instances of unacceptable slug discharges of
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1 TSS to the Brawley collection system during this period but they did not appear
2 to impact ammonia removal.

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4 Beginning in June 2010 through May 2011 ammonia removal had
5 regressed but the trend was reversed with the May 2011 installation of the SAF
6 unit in P3 and other actions as previously described, including P1 cleaning and
7 its discharge line relocation, the installation of a DAF between P1 and P2 and
8 added diffuser chain aeration devices in P2. From June 2011 to December 2013
9 the monthly average ammonia concentration was 20.3mg/l. The 15 months from
10 October 2012 to December 2013 the average was 7.7mg/l with every month
11 below 20 mg/l ammonia. The plant continued to produce similar quality effluent
12 through its closure in May 2014.

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16 In its almost eight year operation the National Beef WWPS ammonia
17 effluent performance data shown in Attachment 8 bears out the fact of an
18 operating environment resulting in substantial nitrification and sustained periods
19 of low effluent ammonia. As stated previously Attachment 8 is a plot of the
20 monthly average WWPS effluent ammonia concentration. If the ammonia weekly
21 24 hour composite data is considered as shown in Attachment 8 it can be seen that
22 for the entire period of National Beef operation, the average ammonia effluent
23 concentration was 23 mg/l. Almost 70% of the time the WWPS effluent
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1 ammonia concentration was less than or equal to 30 mg/l. Almost 88% of the time
2 the effluent weekly values were less than or equal to 50mg/l.

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4 I use 50mg/l as a reference value because in the EPA Local Limits
5 Development Guidance (EPA 833-R-04-002A) it is stated on page 5-23 that
6 “typical concentrations of untreated domestic wastewater range from 10 to 50
7 mg/l”. In essence the National Beef WWPS discharged ammonia concentrations
8 values within the range expected in a typical domestic wastewater almost 88% of
9 the time.
10

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12 Such effluent quality could not have been achieved without the ability to
13 consistently nitrify. As stated previously HR Green quoted an average P1 effluent
14 ammonia value of 137mg/l for the period May 2011 to Aug 2012. Additional
15 National Beef operating data shown in Attachment 6 yields an average P1
16 effluent data of approximately 140 mg/l for the period June 2006 to Aug 2007. In
17 consideration of this information and my experience in operating anaerobic
18 digesters I would believe a value of 140 mg/l ammonia is a representative value
19 for the average P1 effluent or P2 aeration reactor influent. Utilizing this value and
20 the National Beef WWPS effluent values shown in Attachment 10 one arrives at
21 an average % nitrification of 84% over the entire time of the National Beef
22 operation. The median value is 89% with a minimum of 7% and a high of 99+%.
23 The above analysis clearly shows that an operating environment existed in the
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1 National Beef facility that allowed for a high degree of nitrification without any
2 indication of inhibitory effects.

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4 If such nitrification can occur without inhibition in the National Beef
5 facility, it is not reasonable to assert that the presence of the National Beef
6 effluent with ammonia concentrations within the range of domestic sewage
7 almost 90% of the time, or any other National Beef compound in the Brawley
8 influent causes inhibitory effects, prevents nitrification from occurring and
9 therefore pass through and violations of the Brawley NPDES permit. I firmly
10 believe that the National Beef ammonia effluent concentration had no significant
11 impact, if any at all, on the ability of the Brawley WWTP to achieve compliance
12 with NPDES ammonia effluent restrictions. Furthermore, there is no data or
13 information otherwise that would support any theory or argument that in the
14 absence of inhibitory effects National Beef ammonia was deposited in the
15 Brawley ponds and re-released to cause the Brawley WWTP NPDES violations.
16 The fault of ammonia violations was most certainly in the Brawley facility design
17 prior to the advent of the activated sludge system (Lee & Ro) placed in operation
18 circa July – August 2011. An analysis of the totality of the actions and
19 performance data for the National Beef and Brawley treatment facilities for the
20 period June 2, 2006 to present leads to no other plausible conclusion.
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28 Dated: September 18, 2014

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By: S/ JAMES F. STAHL
James F. Stahl

**EDUCATION**

MS, Environmental Engineering, Stanford University

BS, Civil Engineering, Loyola Marymount University

**LICENSES/
REGISTRATIONS**

Professional Engineer (Civil) – CA

Board Certified Environmental Engineer, Water Supply / Wastewater Engineering

James Stahl, PE, BCEE

Mr. Stahl is a Vice President and Senior Advisor for MWH, providing strategic guidance and engineering solutions to water and wastewater agencies, municipal government and industrial clients on the planning, permitting, and implementation of cost-effective and environmentally sound wet infrastructure systems. Prior to joining MWH in 2007, he was a member of the staff of the Los Angeles County Sanitation Districts (LACSD) for 38yrs, the last 7 of which were as the Chief Engineer and General Manager. Mr Stahl is a recognized leader in the field of water reclamation and reuse through his work in the siting, research, design, construction and operation of eleven (11) wastewater treatment and reclamation plants ranging in size from 0.2 to 400mgd and in the facilitation of the implementation of over 700 reuse sites in southern California. He was actively involved in research on biological treatment systems, including MBR, while serving as member and Chair of the Board of Directors of the Water Environment Research Foundation and in their applicability for use by the LACSD as well as at the City of Los Angeles Hyperion Water Reclamation Plant. . In the implementation and sustained operation of all projects, Mr. Stahl employed progressive and comprehensive public education and outreach programs.

Relevant Project Experience**Senior Financial and Strategic Advisor, Financial Managerial, Technical and Regulatory Issues, MWH Global, Americas Region**

Mr. Stahl provides financial and strategic consulting to a variety of industries, municipalities and governmental agencies across the US. He engages at the financial planning and strategic concept level to provide practical approaches to designing, operating and managing water and wastewater systems efficiently and sustainably.

Strategic and Technical Advisor , City of Los Angeles Bureau of Sanitation and Department of Water and Power Recycled Water Strategy Implementation Study

Mr. Stahl was a leading member of an MWH team assessing an array of process alternatives, including an MBR system at the Hyperion WRP, and Agency partnerships to provide increased water quality and quantity for reuse in the South Bay and Harbor areas.

Technical Reviewer, Upper San Gabriel Valley Municipal Water District (USGVMWD), County Sanitation District of Los Angeles County (CSDLAC), Water Replenishment District (WRD), CA - Groundwater Reliability Improvement Program (GRIP) Conceptual Level Study

Mr. Stahl provided technical review during the development of a Conceptual Level Study on the advanced water treatment plant (AWTP) and distribution of product water to spreading basins. The Conceptual level study evaluated San Jose Creek Water Reclamation Plant design flows, effluent withdrawal, site constraints. The study also evaluated property ownership and coordination, project water distribution, and a financial analysis.

Secondary Treatment for the Orange County Sanitation Districts. Fountain Valley California CA

Mr. Stahl was the Project Director for the evaluation of O & M staffing needs for the OCSD in their phased implementation of full secondary treatment. He was also a leading team member in producing a plan of operation for the coordination of their five secondary treatment systems



so as to produce the most cost-effective scheme for regulatory compliance.

Dewatering Facility Upgrade at the Fresno / Clovis Regional Wastewater Reclamation Facility

Mr Stahl was the Principal in Charge for the project to replace the existing belt presses, add an additional truck loading station and expand the dewatering building.

Chief Engineer/General Manager, County Sanitation Districts of Los Angeles County, CA

Mr. Stahl provided the Districts with research, planning, design, construction management, and operational services in wastewater collection and treatment, solid waste management, and energy production systems for approximately five million people and industries located in 78 cities and county unincorporated territory. In this top staff position, Mr. Stahl was responsible for all the Districts' personnel and actions, and reported to a Board of Directors comprised of the mayors of the cities served, the President of the Los Angeles City Council, and the Chair of the Board of Supervisors.

Assistant Chief Engineer/Assistant General Manager, County Sanitation Districts of Los Angeles County, CA

Mr. Stahl was responsible for managing the daily activities of the Districts' technical departments and human resources comprised of 1,800 employees, including approximately 250 engineers and scientists. He gave particular attention to the efficient operation of all of the Districts' field facilities, including 10 Water Reclamation Plants, 7 of which are scalping plants and the 400-mgd Joint Water Pollution Control Plant with its HPOAS system. The projects ranged from expansion improvements for a 400-mgd HPOAS system producing effluent for ocean disposal to works at the Districts 10 water reclamation plants ranging in size from 0.2 to 100 mgd. The majority of the latter facilities included fine bubble diffused air activated sludge incorporating biological nutrient removal followed by in-line coagulation and filtration to produce water meeting Title 22 standards and used in over 700 reuse site. Two additional facilities incorporated oxidation ponds for treatment and reuse. Methane from anaerobic digesters and from the Districts' landfill used to produce energy via fuel cells, microturbines and combined cycle gas/steam turbine operations. During the implementation and ongoing operation of all projects the Districts employed, and Mr Stahl was personally involved in progressive and comprehensive public education and outreach programs. Such work included involvement of school districts and teachers as noted by the active development of the Think Earth program and collaborative partnerships with Cal Poly Pomona in the development of the Institute of Regenerative Studies with an emphasis on sustainable water and energy systems.

Solid Waste Management Department Head, County Sanitation Districts of Los Angeles County, CA

Mr. Stahl was in charge of the CSDLAC's landfills, transfer station, recycling operations, and waste-to-energy and gas-to-energy plants.

Head of Treatment Plant Design, County Sanitation Districts of Los Angeles County, CA

Mr. Stahl was in charge of the technical sections encompassing civil-environmental, mechanical, electrical, instrumentation, and structural engineering; and was involved in the design and construction management of wastewater treatment and biosolids handling facilities. The group's design projects included the then 200-MGD HPOAS facility at the Joint Water Pollution Control Plant (JWPCP) and expansion of the satellite San Jose Creek Water Reclamation Plant to 100mgd. .

Superintendent of Operations for Water Reclamation Plants, County Sanitation Districts of Los Angeles County, CA

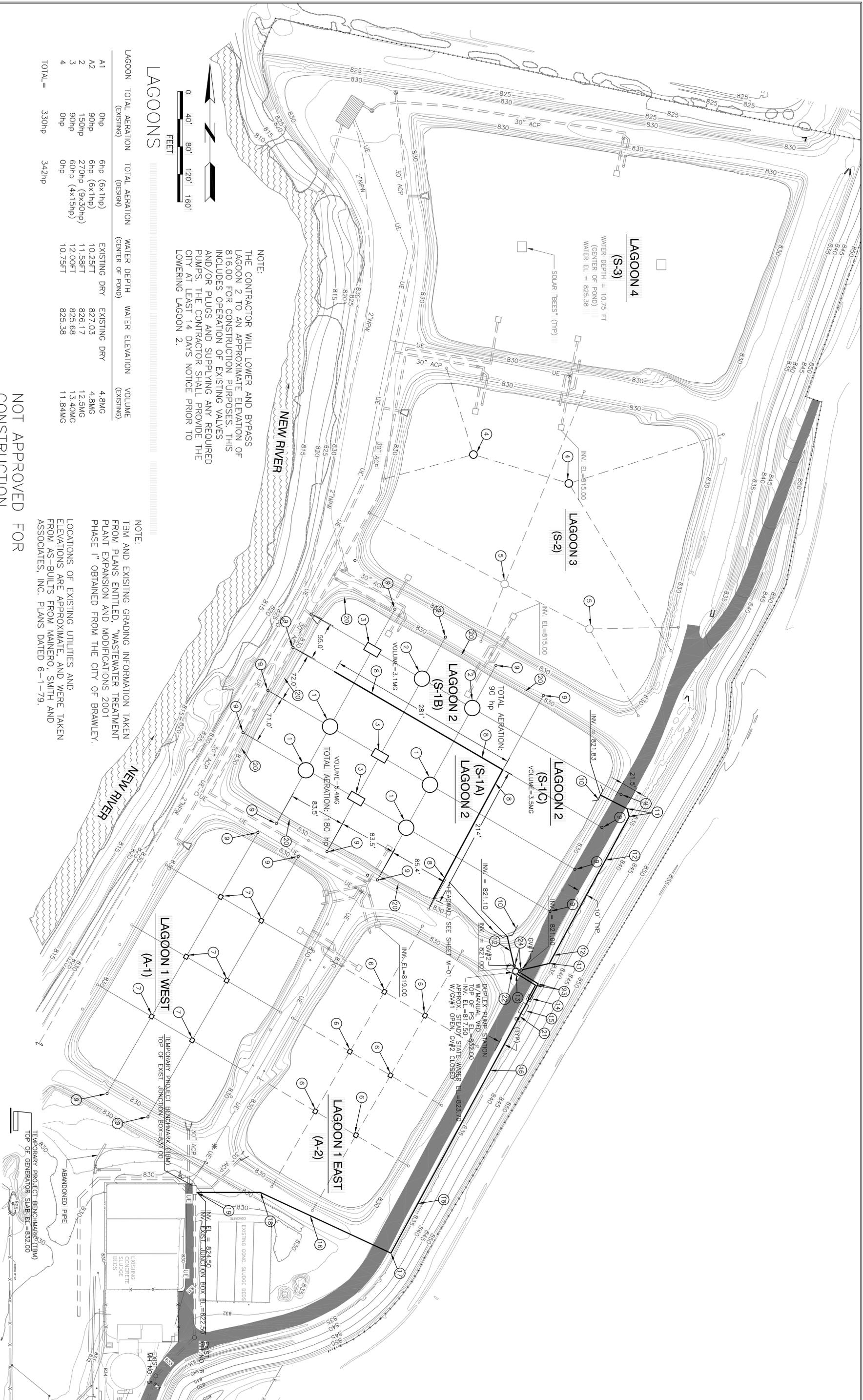
Mr. Stahl managed the operation and maintenance of the CSDLAC's 10 water reclamation plants, employing air-activated sludge, rectangular final sedimentation tanks, multi-media filtration, and chlorination-dechlorination. He conducted plant testing to ascertain operating schemes, in order to minimize aeration tank foaming, maximize control of SVI, and improve performance of the final sedimentation tanks.

Supervisor of Research, JWPCP, County Sanitation Districts of Los Angeles County, CA

Mr. Stahl supervised a group of engineers and technicians in the study and field testing of equipment and processes for the cost-effective optimization and upgrade of wastewater treatment and sludge processing at the JWPCP. The work included the design, construction, and operation of a 0.5-mgd HPOAS plant and a parallel 0.5-mgd deep tank air submerged turbine system. An analysis of the resultant data led to the development of design parameters for a full-scale,



phased 200-mgd HPOAS system with its advantages in energy efficiency and odor minimization. The work also involved an extensive field evaluation of centrifugal and dissolved air flotation thickening units, and a wide array of sludge dewatering equipment.



NOTE:
 THE CONTRACTOR WILL LOWER AND BYPASS LAGOON 2 TO AN APPROXIMATE ELEVATION OF 816.00 FOR CONSTRUCTION PURPOSES. THIS INCLUDES OPERATION OF EXISTING VALVES AND/OR PLUGS AND SUPPLYING ANY REQUIRED PUMPS. THE CONTRACTOR SHALL PROVIDE THE CITY AT LEAST 14 DAYS NOTICE PRIOR TO LOWERING LAGOON 2.

NOTE:
 TBM AND EXISTING GRADING INFORMATION TAKEN FROM PLANS ENTITLED, "WASTEWATER TREATMENT PLANT EXPANSION AND MODIFICATIONS 2001 PHASE 1" OBTAINED FROM THE CITY OF BRAWLEY.

LOCATIONS OF EXISTING UTILITIES AND ELEVATIONS ARE APPROXIMATE, AND WERE TAKEN FROM AS-BUILTS FROM MANNERO, SMITH AND ASSOCIATES, INC. PLANS DATED 6-1-79.

LAGOON	TOTAL AERATION (EXISTING)	TOTAL AERATION (DESIGN)	WATER DEPTH (CENTER OF POND)	WATER ELEVATION (EXISTING)	VOLUME (EXISTING)
A1	0hp	6hp (6x1hp)	10.25FT	827.03	4.8MG
A2	90hp	6hp (6x1hp)	15.00hp	826.17	4.8MG
2	150hp	270hp (9x30hp)	90hp	825.68	12.5MG
3	90hp	60hp (4x15hp)	10.75FT	825.38	13.40MG
4	0hp	0hp			11.84MG
TOTAL =	330hp	342hp			

NOT APPROVED FOR CONSTRUCTION

DATE:	06/29/05	TIME:	1:27 p.m.
SERVER:	NONE	SERVICE:	NONE
PATH:	N:\EG0900\CAD\		
DRAWING NAME:	C-2.DWG		
PLOTTING VIEW:	NONE		
DESIGNER:	DD	PROJ. MGR.:	BM

NO.	BY	DATE	REVISIONS

NOTE

BEYOND ENGINEERING

444 SOUTH 8TH STREET, SUITE C-4
 760.482.8900 TEL. 760.482.0900 FAX
 EL CENTRO, CA. 92543
 WWW.BOLTE.COM

AMMONIA REMOVAL ENHANCEMENT
 PROPOSED SITE PLAN

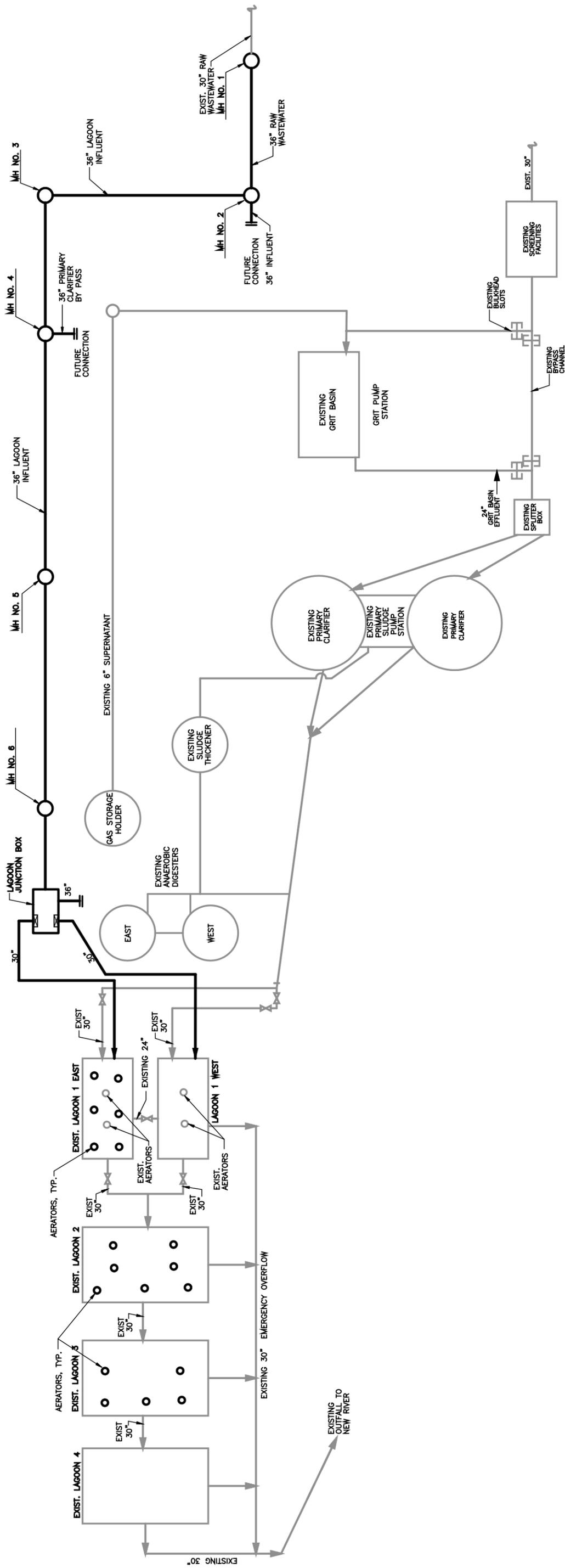
PREPARED FOR: CITY OF BRAWLEY

DATE SUBMITTED: 06-16-05

SHEET NUMBER
C-02

SCALE
 VERTICAL: 1" = 60'
 HORIZONTAL: 1" = 60'

JOB NUMBER
ECR090000



RECORD DOCUMENTS

WARNING

THESE RECORD DOCUMENTS HAVE BEEN PREPARED BASED ON INFORMATION PROVIDED BY OTHERS. THE CONSULTANT HAS NOT VERIFIED THE ACCURACY AND/OR COMPLETENESS OF THIS INFORMATION AND SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THAT MAY BE INCORPORATED AS A RESULT OF ERRONEOUS INFORMATION PROVIDED BY OTHERS.

MINUTES OF MEETING No. 1
City of Brawley Wastewater Treatment Plant Improvements
City of Brawley, CA

ISSUE DATE: October 25, 2007 Job No. 466: File 466H
 PREPARED BY: Dave Bachtel, LEE & RO, Inc.
 REVIEWED BY: Steve Ro, Ruben Mireles, John Carmona and Doug Wylie
 SUBJECT: Kick-off Meeting
 MEETING DATE: October 24, 2007 at 10:00 a.m.
 LOCATION: Brawley Chamber of Commerce Conference Room, Brawley, CA

<u>Attendees</u>	<u>Organization</u>	<u>Telephone</u>
Oscar Rodriguez	City of Brawley, City Manager	(760) 351-3048
Ruben Mireles	City of Brawley, Water/Waste Mgr	(760) 344-2698
Marco A. Garcia	City of Brawley, Wastewater Operations	(760) 344-5803
Raul Bernal	City of Brawley, Wastewater Operations	(760) 344-2698
John Carmona	RWQCB Region 7, Permitting	(760) 340-4521
Doug Wylie	RWQCB Region 7, Enforcement	(760) 346-6585
Kirk Larkin	RWQCB Region 7, Enforcement	(760) 776-8964
Steve Ro	LEE & RO, Inc., Principal in Charge	(626) 912-3391
Dave Bachtel	LEE & RO, Inc., Project Manager	(626) 912-3391
Warner Song	LEE & RO, Inc., Project Engineer	(626) 912-3391

Background or Purpose of Meeting: Kick-off meeting for preliminary design phase of the subject project.

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
1. <u>Project Description and Statement of Goals and Objectives:</u> a. The primary goal is to meet the effluent ammonia requirements specified in the current NPDES Permit No. CA0104361 by RWQCB. The Cease and Desist Order (CDO) requires the City to complete the construction of the required upgrades and begin operation by August 17, 2014. Failure to meet this completion date will subject the City to penalties. It is very compressed schedule for design and construction. Time is of the essence. Design of plant shall be completed by August, and June for 90%.	<input type="checkbox"/>

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>b. Design include Headworks, sole source procurement, sludge processing and handling, Sludge storage, laboratory building, use of existing treatment units, upgrade electrical system.</p>	<p>☐</p>
<p>c. The Funding for the design includes a grant from the Border Environment Cooperation Commission (BECC) and the funding source for the construction will be the California Clean Water State Revolving Fund (CWSRF). The completed design documents must satisfy the requirements for both agencies.</p>	<p>☐</p>
<p>2. <u>PER Reveiw:</u></p> <p>a. Headworks: new Headworks including would be pre-engineered fabricated tested packaged to minimize construction and start-up time. Headworks include influent slide gate, drum screen, manual bypass bar screen, grit chamber, grit pump, grit concentrator.</p>	<p>☐ Provide copy of plan showing water and pipe elevations for hydraulics.. <u>By:</u> Jack Holt</p>
<p>b. Septage receiving station will be provided. The station will include a manual bar rack, grit collection channel and an aerated storage tank. Chopper pumps will be provided to pump the pretreated septage to the Headworks.</p>	
<p>c. The City of Holtville will construct a new 18 inch sewer outfall, Lee and Ro need a copy of plan showing water and pipe elevations for hydraulics. Lee and RO recommends providing a diversion structure which will allow operation from either the existing sewer or the new sewer in the event that construction on the new sewer is not completed in time.</p>	
<p>d. Influent flow meter is including this project. (Susan asked and Dave confirmed) Lee and Ro is looking for parshall flume.</p>	

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>e. The recommended Biolac® process with integral clarifiers would be most appropriately procured on a sole source basis for this project. Parkson has process patent rights to the Wave-Ox process which reduces aeration basin power demand by up to 35% by allowing simultaneous nitrification/denitrification in the single basin. The nitrified/denitrified effluent has higher transmittance which will increase the efficiency and reduce the power demand of the UV disinfection system, as well. Dave suggested the City purchase the equipment through the Contractor with specifications including an experience clause, which would result in a de-facto sole source specification.</p>	<p>☐ Conference Call regarding the sole source procurement <u>By:</u> Jack Holt, Dave Bachtel <u>Participants:</u> THG, LEE and RO, BECC, SWRCB SRF, USEPA, NAD Bank <u>When:</u> In the next few week</p>
<p>f. The thickening of sludge in an aerobic digester is inefficient compared with a separate thickening process. Therefore, the use of a rotary drum thickener combined with asphalt lined drying beds is recommended as the most economical approach from a capital and O&M perspective. The existing drying beds can receive approximately 50% of the sludge produced in the Biolac® process and therefore, additional sludge drying bed area is recommended. An additional drying area will be provided to allow for further drying of solids after they are removed from the drying beds to meet the EPA Class B requirements.</p>	
<p>g. LEE & RO recommends constructing the walls on the existing drying bed and proposed drying bed areas and construction of a new covered three sided structure for storage of processed sludge from the drying beds to avoid wind dispersion of dried solids onto adjacent property.</p>	
<p>h. Operation/Laboratory Building. A prefabricated steel building has been considered, but a wood frame stucco building is recommended. Advantages of the recommended building construction include: lower initial cost, ability to complete design and receive Building Department approval prior to advertisement of the project, and the ability to avoid a sole source or de-facto sole source building structure procurement.</p>	

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>f.</p> <p>The project includes preparation of a preliminary design report followed by preparation of contract documents consisting of plans and specifications for the recommended project option. There are interim reviews for the preliminary design report as well as the final design. In order to most efficiently complete the project, LEE and RO will prepare a memorandum on effluent disposal options considering water reclamation via land application and/or crop irrigation and other types of water recycling such as use for industrial cooling. The minimum treatment requirement for all options is secondary treatment. Additional treatment required for the various reuse options will be discussed as well as requirements for disposal to the New River in compliance with decreased metals limits and other anticipated requirements of the 2010 permit. The memorandum will lay the groundwork for the remainder of the PDR by establishing the basic process selection and design criteria. Joan Stormo of the RWQCB is the Section Chief responsible for land disposal. See next item for more on this issue.</p>	

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>Upon selection of the basic process option, LEE & RO may, with the City's permission begin developing site background information such as survey, geotechnical reports and as-built drawings which will be necessary to expedite the production of the final design.</p>	<p><input type="checkbox"/> Obtain permission of City to begin development of site background information for preliminary and final design.</p> <p><u>By:</u> LEE & RO <u>When:</u> Prior to performing work if work is scheduled to begin prior to acceptance of preliminary design report.</p>

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>3. <u>Review of Regulatory Requirements:</u></p> <p>a. <u>Existing 2005 NPDES Permit No. CA0104523 (expires 6/29/2010)</u></p> <p>The RWQCB stated that the city is not currently in compliance with the ammonia discharge limits of its existing permit, partly due to the ammonia discharged to the system by a large industrial discharger in violation of the City's Industrial Waste Pretreatment Ordinance. The RWQCB has filed a complaint against the City but has not adopted a cease and desist order as of this date. The complaint will soon be rescinded and replaced with a new complaint which will contain penalties up to \$30,000.00/month. The RWQCB may accept a compliance plan in lieu of a penalty. The primary goal of the RWQCB is for the City to enforce the industrial waste pre-treatment ordinance. The discharger has improved its process performance recently and has reduced ammonia to 30-35 mg/l. However, it still is in violation of the discharge ordinance limits and the wastewater treatment plant is still in violation of its discharge limits, in part because of the industrial waste discharge. All enforcement actions and correspondence will need to be coordinated with Doug Wylie, enforcement coordinator with the RWQCB.</p> <p>b. <u>Permit Renewal:</u></p> <p>The application for renewal of the existing permit, which expires on June 29, 2010, is due on December 31, 2009. Prior to that, an engineering expansion/antidegradation analysis report is due. The RWQCB has a suggested outline of this report which is available. A total dissolved solids analysis report is also due. Requirements for this report are in the existing permit. The RWQCB's goal is to limit effluent TDS to 300 mg/l above the source water. Priority pollutant monitoring and CEQA are also due. The RWQCB will provide templates for these reports.</p>	<p>□ Prepare memorandum on effluent disposal options, including land application for agricultural production, golf course and park irrigation and industrial users as well as disposal to the New River. The memorandum will include a discussion and evaluation of the treatment levels necessary for the various disposal options and a discussion of the steps necessary to implement a reuse program. A discussion of possible funding sources for reuse will be included.</p> <p><u>By:</u> LEE & RO <u>When:</u> In accordance with revised project schedule (see Item 6 below).</p>

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>c. <u>New Permit Waste Discharge Requirements:</u> The RWQCB stated that waste discharge limits for the new permit will continue with the more stringent limits on copper, free cyanide, lead, selenium and zinc in the existing permit which take effect on 5/29/2010. Additional priority pollutants listed in the California Toxics Rule (CTR) may be added if detected in the effluent near the CTR limits. Possible candidates are thallium and nickel. The RWQCB recognizes that the removal of the priority pollutants, especially heavy metals, may not be economically feasible. The RWQCB strongly recommends the recycling of effluent to avoid these more stringent limits by not discharging effluent. Recycling may be more cost-effective and reliable. Any plant design undertaken must take the 2010 limits into consideration. It is not likely that additional TMDL's will be promulgated soon. Resolution of issues regarding the Salton Sea may take another decade. Work on establishing nutrient TMDL's for the Salton Sea is currently on hold.</p> <p>d. <u>Effluent Recycling:</u> Recycling of water by land application is regulated by the Land Disposal group at the RWQCB. They can issue a master permit to the City of Brawley which would then allow the city to permit individual users or they can issue the city a distribution permit where the individual users would obtain disposal permits from the RWQCB. The City should consider storage requirements if reuse is to be relied upon in lieu of discharge so that seasonal and crop related variations in recycled water use can be accommodated without resulting in effluent discharge. Possible users of recycled water include Caltrans, the local golf course, City parks and landscaping, a proposed ethanol plant, crops for ethanol, other farming activities and a proposed geothermal plant. It is recommended that, if the City intends to terminate its discharge in favor of land application, coordination with the RWQCB's land disposal unit be initiated as soon as possible.</p>	

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>4. <u>Project Funding:</u> The City of Brawley has applied for a State Revolving Fund (SRF) Loan as a means of financing this project in addition to municipal bond financing. There are several requirements for receiving an SRF loan, including CEQA documentation, demonstration of an adequate revenue program to pay back the loan and operate and maintain the facility, a wastewater facilities plan, value engineering studies (the estimated cost of this project will exceed the \$10,000,000 project value requirement threshold for value engineering), SWRCB plan and specification review, minority and women owned business outreach during the bidding process, etc. These additional steps are not currently incorporated into the project schedule or the design fee. Depending upon the burden of obtaining the SRF loan funds, the City may choose to fund the project by another route such as bond funding. In order to assist the City in assessing the project funding alternatives, LEE & RO will prepare a list of loan funding requirements for the City's consideration and will prepare a revised project schedule incorporating the additional work required to secure the loan funding. LEE & RO is familiar and experienced with the SRF loan program and will be available to assist in securing the SRF loan in whatever capacity the City desires. The RWQCB may also assist in procuring the loan funding, if necessary, by taking actions which would enhance the priority of the City's loan application. Jose Figueroa-Acevedo is the RWQCB Region 7 State Revolving Fund Coordinator.</p>	<p>□ Prepare a list of requirements for SRF loan funding for the City and a revised project schedule incorporating those requirements.</p> <p><u>By:</u> LEE & RO <u>When:</u> Will prepare SRF loan requirements and revised project schedule within two weeks of the meeting.</p>
<p>5. <u>Preliminary Design Technical and Scope Issues</u></p> <p>a. <u>Nitrogen Trading:</u> Nitrogen trading is not feasible at the current time. There is no overall total nitrogen limit. The ammonia limit is based on effluent toxicity for which there is no trading.</p>	

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>b. <u>Plant Hydraulic Capacity:</u> The current permitted plant capacity is 5.9 mgd. Construction of less than 5.9 mgd of capacity will result in a downgrading of the plant capacity to what is constructed. If the actual plant flow is 80% or more than the rated design capacity, the RWQCB may require the construction of additional capacity. LEE & RO will study plant flow data (including flow or population projections) provided by the City and make recommendations on the design capacity for this project. Plant flow data will also be analyzed to make recommendations on flow equalization design. The City has cautioned that some of City (about 60%) utilizes combined sewers. This will impact peak storm flows as well as total flow during storm events. Currently, the influent flow meter is not operational. Since only the effluent flow data is available, it will be difficult to estimate storm peaks. Any historical data available which includes influent metering during storm events would be quite valuable.</p>	<p>❑ Flow data analysis for recommendation of plant capacity and development of flow equalization options</p> <p><u>By Whom & When:</u> Brawley will provide flow data and projections as soon as possible. LEE & RO will include analysis of the data with the memorandum on disposal options.</p>
<p>c. <u>Flood Protection:</u> The NPDES permit requires that the treatment plant be protected from wash-out or inundation from a 100 year flood. The city will attempt to locate calculations demonstrating compliance with this requirement. If such an investigation has not been performed, it can be performed by LEE & RO.</p>	<p>❑ Locate or prepare calculations, flood hazard maps or other information confirming protection from a 100 year flood event.</p> <p><u>By:</u> City of Brawley will attempt to locate existing information. If none exists, this analysis will be needed as part of the preliminary design.</p> <p><u>When:</u> Prior to 50% PDR submission.</p>

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>d. <u>Existing Sludge Lagoons:</u> Some of the existing lagoons have sludge accumulations in them. The A-1 lagoon was cleaned in 2006. The A-2 lagoon needs to be cleaned. Brawley operations staff needs approximately 1 year to empty, dewater, clean and dry a lagoon before it can be used as a construction site. The existing lagoons are unlined.</p>	<p>☐ Notify City of lagoon areas for anticipated plant construction. <u>By Whom & When:</u> LEE & RO will notify City of Brawley as soon as possible during the preliminary design phase of lagoons where probable construction of new facilities is anticipated.</p>
<p>e. <u>Operation of Existing Plant:</u> The existing plant will need to be operated during construction in compliance with the current permit. The plant previously operated without the A-1 basin for one year. Interim changes to the existing plant may be required to meet current discharge limitations during design and construction.</p>	<p>☐ Develop interim operation plan for construction phase. <u>By Whom & When:</u> LEE & RO will prepare plans during preliminary design phase and during final design.</p>
<p>f. <u>Biolac Process:</u> The Biolac process with integrated clarifiers is preferred by the City as a secondary treatment process. Grit chambers are required for use with the Biolac system. LEE & RO will modify the existing grit pumping system to work properly. The Biolac process works better without a primary clarifier. The existing primary clarifiers will be investigated for use in sludge thickening, aerobic sludge digestion or for use as back-up the integrated clarifiers. Evaluation of the reuse of equipment will be based on economic evaluation of alternatives.</p>	<p>☐ Evaluate existing grit collection and pumping equipment and make it work. Evaluate use of existing primary clarifiers in the treatment process. Re-use if economically feasible. <u>By Whom & When:</u> LEE & RO will perform evaluations as part of the preliminary design process.</p>
<p>g. <u>Solids Handling:</u> Evaluation of sludge thickening, storage and dewatering will be performed. Centrifuges, belt filter presses and drying beds, alone or in conjunction with other dewatering technology will be investigated.</p>	<p>☐ Investigate solids handling options. <u>By Whom & When:</u> LEE & RO will perform evaluations as part of the preliminary design process.</p>

NEW BUSINESS (MEETING NO. 1)

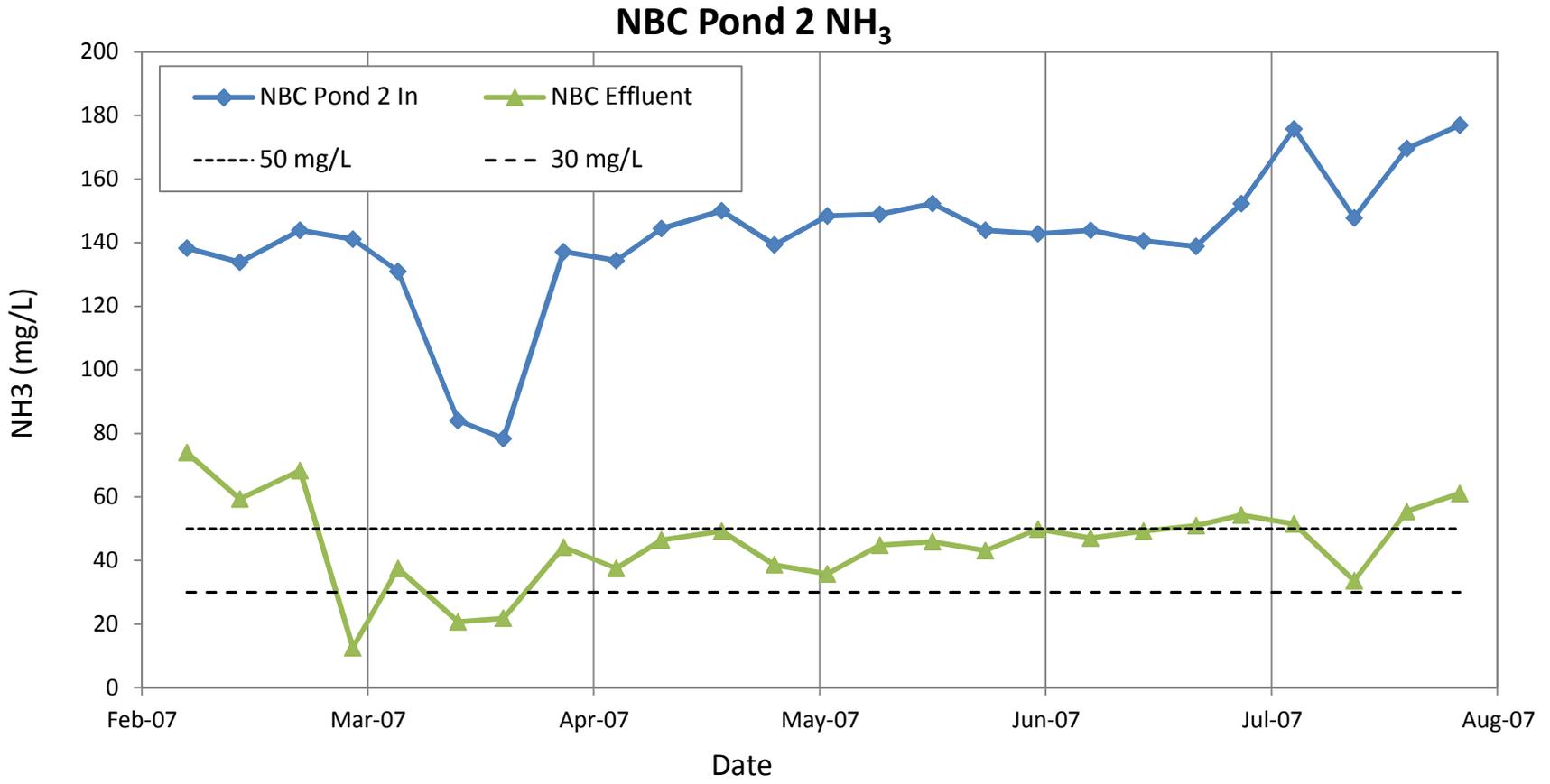
ITEMS OF DISCUSSED	ACTION REQUIRED
<p>h. <u>Flow Equalization:</u> As indicated previously, the Brawley collection system consists of approximately 40% separate sewers and 60% combined sewers. The use of flow equalization is desired to minimize facility sizing and cost. Equalization may be done in existing ponds or unused structures, if possible.</p>	<p><input type="checkbox"/> Investigate influent flow equalization options, especially for storm flows. <u>By Whom & When:</u> LEE & RO will perform evaluations as part of the preliminary design process. Some discussion will be included with the treatment and disposal options memorandum, if possible.</p>
<p>i. <u>Odors:</u> Odors are not a problem at this facility due to its remote location.</p>	
<p>6. <u>Schedule:</u> Lee & Ro will revise the initial project schedule, which was not distributed, to include estimates of the additional time necessary to obtain SRF loan funding. The updated schedule will be provided within two weeks with other information regarding SRF loan funding requirements.</p>	
<p>7. <u>Lines of Communication:</u> Ruben Mireles will be the primary contact with the City of Brawley and will coordinate contact with others within the City. Information requests and field visits will be coordinated with him. The primary point of contact at LEE & RO will be Dave Bachtel.</p>	
<p>8. <u>Data Acquisition:</u> Brawley will provide information in their possession as requested. Brawley will also attempt to retrieve any information that may be in the possession of Nolte.</p>	

NEW BUSINESS (MEETING NO. 1)

ITEMS OF DISCUSSED	ACTION REQUIRED
<p>9. <u>Project Reports:</u> LEE & RO will include a status report with its monthly billings.</p> <p>Dave Bachtel will discuss project status with Ruben Mireles on a weekly basis and provide written documentation of project status as necessary for Mr. Mireles to keep the City Manager and City Council informed.</p>	<ul style="list-style-type: none">❑ LEE & Ro to provide monthly status reports with billing.❑ Dave Bachtel to discuss project status weekly with Ruben Mireles.

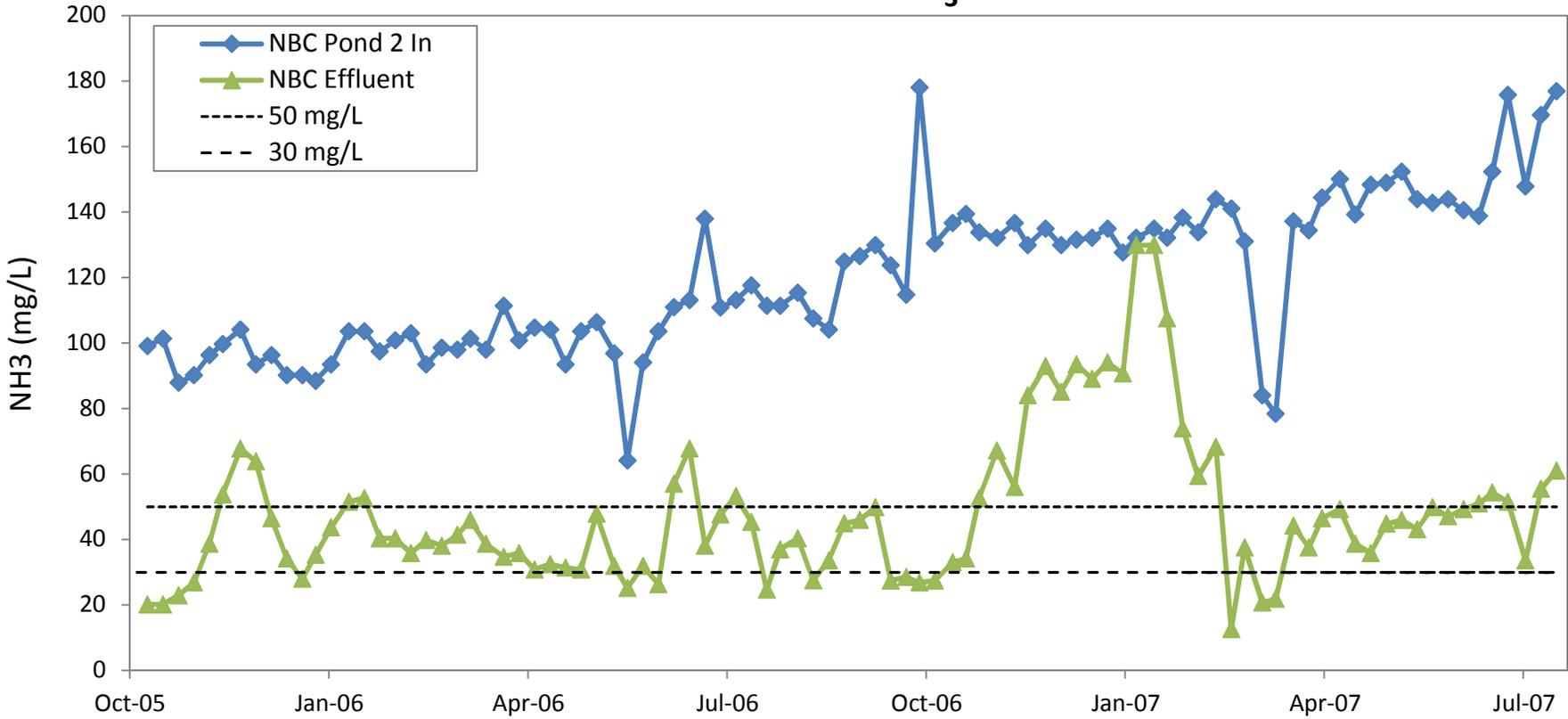
-End of Minutes-

Summary Statistics				
Data points: 25				
Date Range: Feb'07 to Aug'07 (weekly data)				
	NH3 (mg/L)			
	Mean	Meadian	Min	Max
NBC Pond 2 In	141.54	143.92	78.40	176.96
NBC Effluent	45.33	46.48	12.60	73.92
Pond 2 to Effluent Average % NH3 removal: 68.1%				

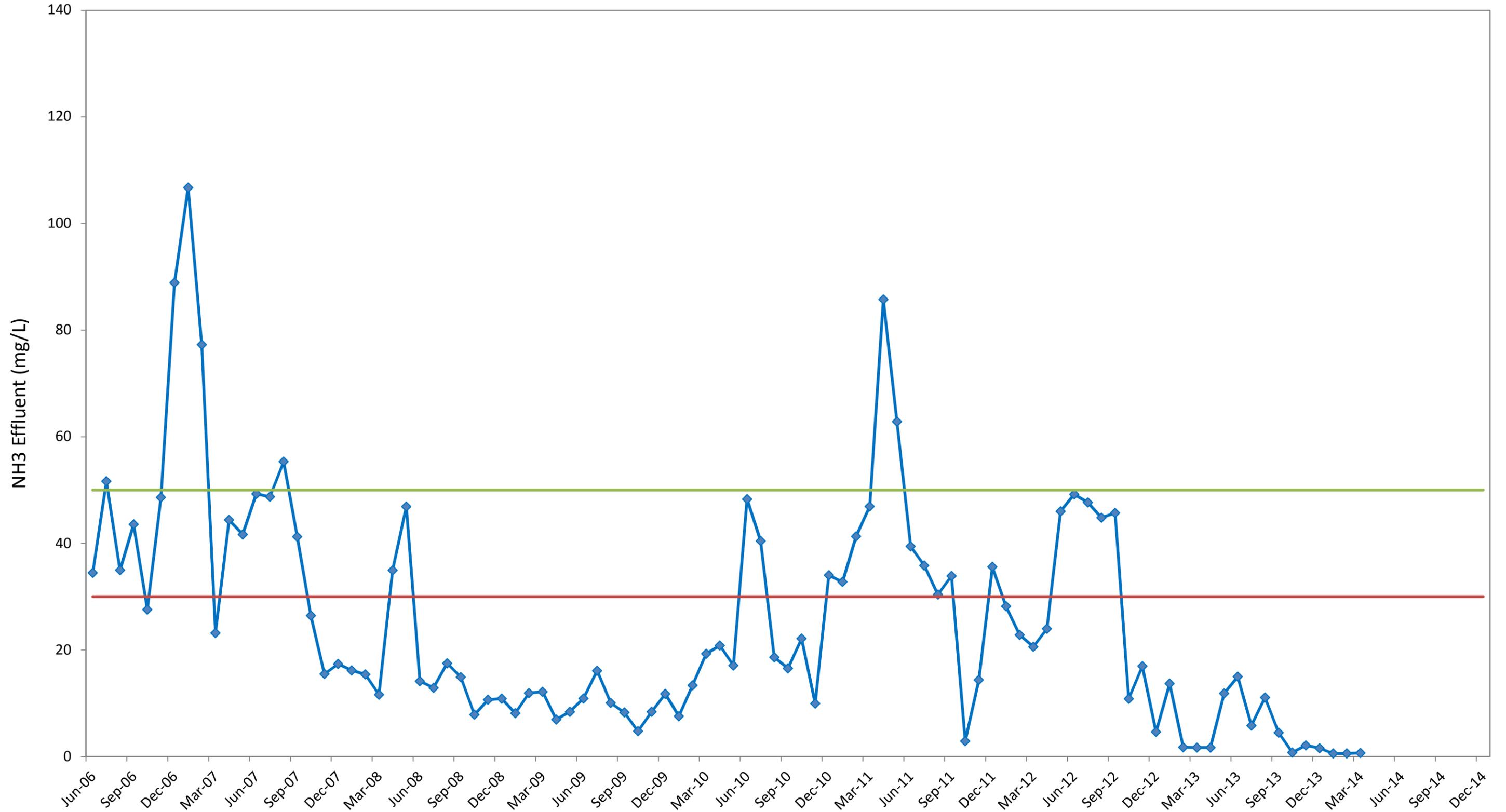


Summary Statistics				
Data points: 92				
Date Range: Nov'05 to Aug'07 (weekly data)				
	NH3 (mg/L)			
	Mean	Meadian	Min	Max
NBC Pond 2 In	119.91	116.48	64.16	178.08
NBC Effluent	47.62	43.40	12.60	129.92
Pond 2 to Effluent Average % NH3 removal: 60.2%				

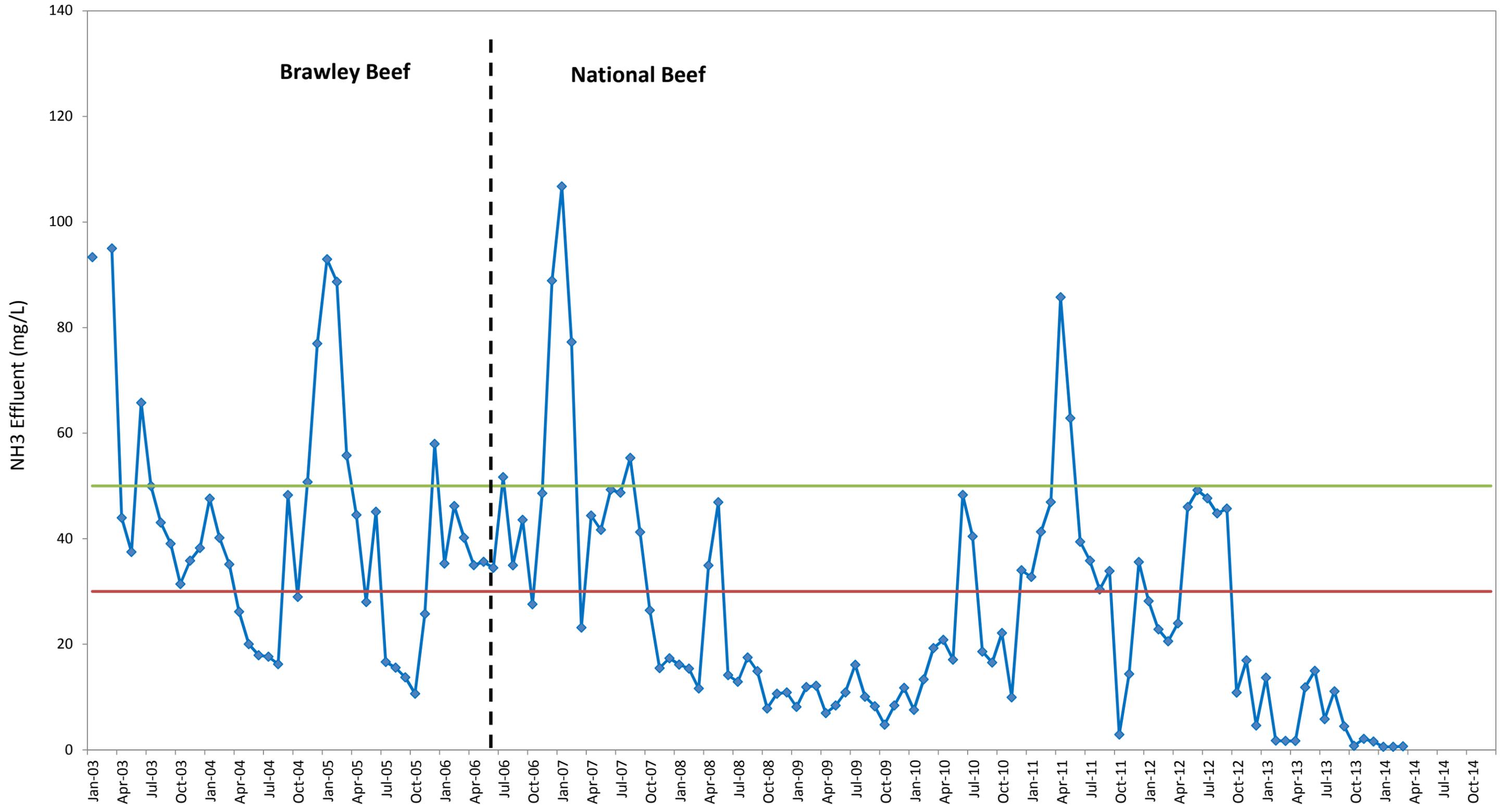
NBC Pond 2 NH₃



National Beef NH3 Effluent



Brawley Beef and National Beef NH3 Effluent



Summary Statistics NBC/Brawley Beef NH3 effluent concentrations (Based on MONTHLY AVERAGES)

Period	Date Range	Mean	Median	Max	Min	% <= 50 mg/L	% <= 30 mg/L
Overall Slaughterhouse	Jan'02 to March'14	35.28	29.27	148.00	0.56	78.1%	50.0%
Brawley Beef Ownership	Jan'03 to May'06	53.18	44.52	148.00	10.64	58.5%	22.6%
NBC Ownership	June'06 to March'14	25.47	17.36	106.74	0.56	89.2%	65.6%

Summary Statistics NBC/Brawley Beef NH3 effluent concentrations (Based on WEEKLY VALUES)

Period	Date Range	Mean	Median	Max	Min	% <= 50 mg/L	% <= 30 mg/L
Overall Slaughterhouse	1/2/2003 to 3/28/2014	27.01	20.72	145.09	0.56	84.7%	61.8%
Brawley Beef Ownership	1/2/2003 to 6/2/2006	41.38	36.40	145.09	3.36	74.3%	34.7%
NBC Ownership	6/2/2006 to 3/28/2014	23.18	16.24	129.92	0.56	87.5%	69.1%

NBC/Brawley Beef Annual Summary Statistics - NH3 (Based on WEEKLY VALUES)

Effluent NH3 (mg/L)						
Year	Mean	Median	Max	Min	% <= 50 mg/L	% <= 30 mg/L
2003	49.41	40.00	100.00	22.40	0.66	0.20
2004	36.58	31.64	86.80	3.36	0.78	0.44
2005	40.49	29.12	145.09	9.52	0.71	0.51
2006	43.20	38.36	93.52	24.64	0.77	0.17
2007	47.12	44.80	129.92	12.60	0.69	0.27
2008	17.82	15.24	73.92	1.68	0.98	0.89
2009	9.81	10.64	32.48	0.56	0.98	0.96
2010	24.57	20.68	94.08	1.12	0.91	0.79
2011	37.95	38.35	98.52	0.56	0.74	0.40
2012	30.39	27.16	87.36	0.56	0.81	0.55
2013	6.66	2.24	54.88	0.56	0.99	0.93
2014	0.59	0.56	1.12	0.56	1.00	1.00

NBC/Brawley Beef Annual Summary Statistics -BOD (Based on WEEKLY VALUES)

Effluent BOD (mg/L)				
Year	Mean	Median	Max	Min
2005	94.44	73.00	193.00	23.00
2006	115.65	90.00	410.00	16.00
2007	144.21	134.50	550.00	0.00
2008	118.68	119.00	184.00	70.00
2009	74.63	55.50	370.00	16.25
2010	108.08	69.00	440.00	14.00
2011	127.63	64.88	620.00	9.10
2012	57.68	42.00	204.00	5.25
2013	40.32	24.50	189.00	1.38
2014	30.06	26.15	92.85	4.08

NBC/Brawley Beef Annual Summary Statistics -TSS (Based on WEEKLY VALUES)

Effluent TSS (mg/L)				
Year	Mean	Median	Max	Min
2005	58.06	54.50	88.00	36.50
2006	55.66	54.75	100.00	21.50
2007	61.12	53.00	273.00	0.00
2008	122.61	48.00	1561.00	14.50
2009	696.18	192.00	8015.50	21.00
2010	498.60	109.25	3443.00	18.00
2011	620.19	56.00	8114.00	14.00
2012	80.08	58.00	464.00	4.00
2013	48.25	32.00	488.00	0.38
2013	32.16	27.50	150.00	9.00

1 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

2 **STATE OF CALIFORNIA**

3 In the Matter of :
4 ADMINISTRATIVE CIVIL LIABILITY
5 COMPLAINT R7-2014-0041 ISSUED TO
6 NATIONAL BEEF CALIFORNIA, LP,
7 OWNER/OPERATOR WASTEWATER
8 TREATMENT FACILITY
9 CITY OF BRAWLEY-IMPERIAL
10 COUNTY

AFFIDAVIT OF ANDREW E. MARSH IN
SUPPORT OF SUBMISSION OF NATIONAL
BEEF CALIFORNIA, LP

PERRY L. GLANTZ
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5613 DTC Parkway, Suite 970
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J.G. ANDRE MONETTE
BEST BEST & KRIEGER
655 West Broadway, 15th Floor
San Diego, CA 92101
Telephone: (619) 525-1300
Facsimile: (619) 233-6118

Attorneys for:

National Beef California, LP

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17
18 Andrew E. Marsh after being duly sworn and upon his oath, states the following based on
19 personal knowledge:

- 20 1. My name is Andrew E. Marsh. I reside at 2925 Orchard View Ln NE Iowa City, IA.
- 21 2. I am a registered professional engineer in the States of Iowa, Illinois, Arizona, Minnesota,
22 Nebraska and Georgia. I am employed by HR Green, Inc. providing engineering consulting
23 services. Among my responsibilities as a professional engineer is design of industrial
24 wastewater pretreatment systems, assessment of existing industrial wastewater pretreatment
25 systems, and development of recommendations regarding upgrades and expansions of such
26 systems.
- 27 3. In 2012 and 2013 a team of engineers and professionals at HR Green, Inc. of which I was
28 integrally a part, conducted an assessment of the National Beef California industrial wastewater

1 pretreatment system pursuant to a September 7, 2012 City of Brawley request to National Beef
2 California. In April 2013 HR Green, Inc. under the Professional Engineer stamp of Jamal
3 Awad, (Mr. Awad no longer is employed with HR Green, Inc.) delivered to National Beef
4 California a Preliminary Engineering Report presenting the assessment and presenting
5 recommendations for improvements to the pretreatment system.

- 6 4. I have reviewed Attachment M to Administrative Civil Liability Complaint R7-2014-0041
7 which lists four compliance actions that are similar to recommendations in the April 2013 HR
8 Green, Inc. Preliminary Engineering Report and that appears to assert that these actions should
9 have been taken June 2, 2006.
- 10 5. The April 2013 HR Green, Inc. Preliminary Engineering Report is irrelevant to the National
11 Beef industrial wastewater treatment system as it existed on June 2, 2006 and in no way should
12 be construed as a statement that recommendations in the Preliminary Engineering Report
13 should have been or could have been implemented in 2006.

14
15 I declare under penalty of perjury that the foregoing is true and correct.

16
17 Executed this 16th day of September, 2014 at _____

18
19
20 By: 
21 Andrew E. Marsh

1 State of Iowa
2 County of Linn

3

4 On September 16, 2014 before me, Jodi L. Nealson personally appeared Andrew E. Marsh,
5 of HR Green, Inc., who proved to me on the basis of satisfactory evidence to be the person whose
6 name is subscribed to the within instrument and acknowledged to me that he executed the same in his
7 authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of
8 which the person acted, executed the instrument.

9 I certify under penalty of perjury that the foregoing paragraph is true and correct.

10 WITNESS my hand and official seal.

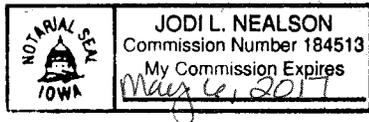
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13 Signature Jodi L. Nealson (Seal)

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BEFORE THE STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

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

AFFIDAVIT OF DAVID KALSCHEUR IN
SUPPORT OF SUBMISSION OF NATIONAL
BEEF CALIFORNIA, LP

PERRY L. GLANTZ
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San Diego, CA 92101
Telephone: (619) 525-1300
Facsimile: (619) 233-6118

Attorneys for:

National Beef California, LP

David Kalscheur after being duly sworn and upon his oath, states the following based on
personal knowledge:

1. My name is David Kalscheur. I reside at 1901 Avenue P, Dodge City, Kansas 67801.
2. I am Vice President of Engineering for National Beef Packing Company, LLC and its associated entities, including National Beef California, L.P. ("National Beef"). I am responsible for all engineering matters for National Beef including budgeting and spending for engineering expenses.
3. I have reviewed the spreadsheet entitled National Beef Brawley Waste Water Spending 8/28/2014. See Exhibit ___. The spreadsheet is based upon the records and data maintained by

1 National Beef in the ordinary course of business recorded at or about the time of the
2 information reflected therein by employees of National Beef with personal knowledge of that
3 information. The spreadsheet attached as Exhibit __ to the evidentiary submission of National
4 Beef accurately reflects money spent to operate and maintain industrial wastewater
5 pretreatment systems at the National Beef plant in Brawley, California and to comply with
6 applicable operational and discharge requirements. The monies spent vary from year to year
7 dependent upon the equipment in place, the maintenance activities needed, and the external
8 costs from vendors and suppliers.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed this 15 day of September, 2014 at Liberal, Kansas.

11
12 By: 

13 David Kalscheur

14 State of Kansas)

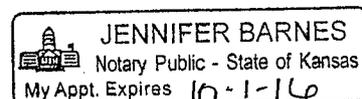
15 County of Seward)

16
17 On September 15, 2014 before me, Jennifer Barnes personally appeared David
18 Kalscheur, Vice President of Engineering for National Beef Packing Company, who proved to me
19 on the basis of satisfactory evidence to be the person whose name is subscribed to the within
20 instrument and acknowledged to me that he executed the same in his authorized capacity, and that
21 by his signature on the instrument the person, or the entity upon behalf of which the person acted,
22 executed the instrument.

23 I certify under penalty of perjury that the foregoing paragraph is true and correct.

24 WITNESS my hand and official seal.

25
26
27 Signature  (Seal)



Submission Exhibit Number	Submission Title
Defendant Exhibit 001	Industrial Pretreatment Program
Defendant Exhibit 002	Form Daily Process Control Report
Defendant Exhibit 003	Discharge Permit 001
Defendant Exhibit 004	Board Order R7-2014-0033
Defendant Exhibit 005	Drawing
Defendant Exhibit 006	Site Map
Defendant Exhibit 007	Summary of Soil Characteristics
Defendant Exhibit 008	Pretreatment Facility Drawing 8-26-2013
Defendant Exhibit 009	Design Basis and WW Improvement Overview
Defendant Exhibit 010	HR Greene Preliminary Engineering Report April 2013
Defendant Exhibit 011	WW Test Results 2008-2013
Defendant Exhibit 012	WW photo
Defendant Exhibit 013	5-11-2011 email Re: Pond 2 AOTR
Defendant Exhibit 014	Alkalinity Test 1-5-2012
Defendant Exhibit 015	City Report to State January 2012
Defendant Exhibit 016	WW Ordinance 2001 and Letters
Defendant Exhibit 017	Financial Report 2008
Defendant Exhibit 018	Financial Report 2009
Defendant Exhibit 019	Financial Report 2010
Defendant Exhibit 020	Financial Report 2011
Defendant Exhibit 021	Brawley check
Defendant Exhibit 022	Bid recommendation 11-30-2005
Defendant Exhibit 023	Letter regarding Ammonia Removal Project 7-28-2005
Defendant Exhibit 024	Floating Silt Curtain
Defendant Exhibit 025	Projected Flows Summary Sheet
Defendant Exhibit 026	NOV 1-14-2014
Defendant Exhibit 027	Influent data 2008-2011
Defendant Exhibit 028	Yearly ammonia levels
Defendant Exhibit 029	Jan-March 2010 loading rates
Defendant Exhibit 030	Email from Arvizu to Mireles re 2011-2013 NB composites
Defendant Exhibit 031	ATS 9-22-11 report
Defendant Exhibit 032	chain of custody sheet
Defendant Exhibit 033	Email from Arellan to Mireles re ammonia information needed 12-6-2013
Defendant Exhibit 034	Email from Bachtel to Kleine re requirements for industrial treatment program 12-4-2013
Defendant Exhibit 035	Email re press event 2-21-2014
Defendant Exhibit 036	Form Log of WW pretreatment schedule
Defendant Exhibit 037	Response to City of Brawley public notice 2-19-2014
Defendant Exhibit 038	City WWTP analytical report 2014
Defendant Exhibit 039	Data summary-analytical 12-1-2010
Defendant Exhibit 040	Data summary-analytical 12-6-2010
Defendant Exhibit 041	Data summary-analytical 8-3-2011
Defendant Exhibit 042	City WW report August 2011
Defendant Exhibit 043	City WW report January 2011
Defendant Exhibit 044	City letter to Board 2-25-2011
Defendant Exhibit 045	City WW report November 2012

Defendant Exhibit 046	City pretreatment report 2013
Defendant Exhibit 047	City data summary-analytical 4-7-2014
Defendant Exhibit 048	WW sample plan 12-21-2012
Defendant Exhibit 049	Layout drawing
Defendant Exhibit 050	Brawley inspection report 9-26-2007
Defendant Exhibit 051	Brawley value engineering report August 2008
Defendant Exhibit 052	LEE & RO site plan
Defendant Exhibit 053	Ammonia removal enhancement project contrac documents and specifications
Defendant Exhibit 054	Drawing
Defendant Exhibit 055	City WW Phase II plans
Defendant Exhibit 056	City WW Phase II process flow diagram
Defendant Exhibit 057	City local limits study December 2013
Defendant Exhibit 058	Durham memo to Carmona re FOG training courses 2-3-2009
Defendant Exhibit 059	Pond Volumes
Defendant Exhibit 060	City WW K Street drainage diagram 2011
Defendant Exhibit 061	City water flow data for 2000 through 2011
Defendant Exhibit 062	City documents to Board in 2012 regarding city's water rates, etc.
Defendant Exhibit 063	City to Board includes flow data for the beef plant (monthly for 2002 through 2009 and daily for July 2009 - Dec. 2012
Defendant Exhibit 064	City to Board includes NB Plant monthly loading rates/cost 2009-2012; ATS lab reports of NB July 2008-2012
Defendant Exhibit 065	City to Board includes Imperial Valley Lab weekly testing March 2011 to Jan 2013
Defendant Exhibit 066	City to Board includes Heron report to Board 2012-05-29
Defendant Exhibit 067	City to Board including 8/1/2012 memo from Tetra Tech to Board re inspection of City Compliance Inspection
Defendant Exhibit 068	City to Board including weekly NB composite samples 2009-2012; ATS Lab results submitted to City
Defendant Exhibit 069	City to Board includes 2008 Draft Revenue Program, ammonia limits; monthly meter readings 2008-2012; monthly billings from City
Defendant Exhibit 070	City to Board including NOV's and enforcement actions and emails
Defendant Exhibit 071	City to Board including invoices from ATS, Imperial Valley lab, Lee & Ro, Inc.
Defendant Exhibit 072	City to Board including Ltr from City to NB re WW discharge permit and application
Defendant Exhibit 073	City to Board including 2012 ATS lab testing results
Defendant Exhibit 074	City to Board including 2008 to 2013 WW funds paid by NB, checks and receipts, general journal entries
Defendant Exhibit 075	City to Board including City annual financials
Defendant Exhibit 076	City's response to subpoena for records and documents

Defendant Exhibit 077	Larkin email to Carmona re City of Brawley pollutant calculations
Defendant Exhibit 078	Larkin email to Carmona re proposal 6-4-2004
Defendant Exhibit 079	Larkin email to Wylie re enforcement actions 1-29-2007
Defendant Exhibit 080	City WW improvement agenda 10-24-2007
Defendant Exhibit 081	Board Inspection Report of City WW 8-8-2007
Defendant Exhibit 082	Board Inspection Report of City WW 9-26-2007
Defendant Exhibit 083	EPA Region IX CEI checklist
Defendant Exhibit 084	Larkin email to Carmona re City WWTP effluent data 7-10-2007
Defendant Exhibit 085	Durham email to Carmona re pretreatment tasks 12-12-2008
Defendant Exhibit 086	Durham email to Mireles re pretreatment tasks 12-15-2008
Defendant Exhibit 087	Durham email to Mireles re pretreatment tasks 1-5-2009
Defendant Exhibit 088	DEF-88 Durham memo to Carmona re FOG training courses 2-3-2009
Defendant Exhibit 089	Notice of Board Order R7-2007-0069
Defendant Exhibit 090	Durham email to Wylie re review of City pretreatment program 3-11-2009
Defendant Exhibit 091	City pretreatment submission evaluation April 2009
Defendant Exhibit 092	City pretreatment program legal checklist 4-28-2009
Defendant Exhibit 093	Durham email to Wylie re Brawley review checklist 5-19-2009
Defendant Exhibit 094	Durham email to Wylie re Brawley legal review checklist final 6-11-2009
Defendant Exhibit 095	Carmona email to Acevedo re Brawley program review final summary
Defendant Exhibit 096	Durham email to Randall re pretreatment funding 1-29-2010
Defendant Exhibit 097	Durham email to Carmona re 2010-11 pretreatment support 12-22-2010
Defendant Exhibit 098	EPA Region IX CEI Report 11-30-2010
Defendant Exhibit 099	Carmona email to Escobar re CEI of Brawley WWTP 1-28-2011
Defendant Exhibit 100	Pretreatment program submission package outline
Defendant Exhibit 101	Board letter to City re implementation of pretreatment program 12-10-2012
Defendant Exhibit 102	City local limits sampling plan 7-10-2012
Defendant Exhibit 103	LEE & Ro letter to Carmona re local limits sampling plan 7-10-2012
Defendant Exhibit 104	LEE & RO January 2013 industrial pretreatment program
Defendant Exhibit 105	City chronology of WWTP
Defendant Exhibit 106	Board order R7-2010-0022
Defendant Exhibit 107	City local limits sampling plan by LEE & Ro 7-23-2012

Defendant Exhibit 108	Board letter to City re review of pretreatment program 3-22-2013
Defendant Exhibit 109	City pretreatment program submission evaluation report final
Defendant Exhibit 110	LEE & RO letter to board re local limits study report 5-7-2013
Defendant Exhibit 111	LEE & RO local limits study May 2013
Defendant Exhibit 112	Durham memo to Carmona re revised sewer use ordinance 5-23-2013
Defendant Exhibit 113	Carmona email to Mireles re pretreatment program revised submission 7-18-2013
Defendant Exhibit 114	Brawley pretreatment program checklist
Defendant Exhibit 115	Brawley pretreatment program revised checklist 12-31-2013
Defendant Exhibit 116	Board Resolution re Brawley pretreatment program
Defendant Exhibit 117	EPA testimony email
Defendant Exhibit 118	HR Green Groundwater Study
Defendant Exhibit 119	HR Green letter to Angel 9-26-13
Defendant Exhibit 120	App A
Defendant Exhibit 121	App A Figures
Defendant Exhibit 122	2008 Aerator email
Defendant Exhibit 123	App B Tables
Defendant Exhibit 124	App C
Defendant Exhibit 125	2008 Aerator AFE
Defendant Exhibit 126	APP D
Defendant Exhibit 127	APP D water quality reports
Defendant Exhibit 128	APP E
Defendant Exhibit 129	APP E Landmark report
Defendant Exhibit 130	HR Green groundwater study 9-26-2013
Defendant Exhibit 131	HR Green letter of transmittal
Defendant Exhibit 132	HR Green letter to Angel 9-26-2013
Defendant Exhibit 133	APP A
Defendant Exhibit 134	APP A figures
Defendant Exhibit 135	APP B
Defendant Exhibit 136	APP B tables
Defendant Exhibit 137	APP C
Defendant Exhibit 138	APP C subsurface
Defendant Exhibit 139	APP D
Defendant Exhibit 140	APP D water quality reports
Defendant Exhibit 141	APP E
Defendant Exhibit 142	APP E landmark report
Defendant Exhibit 143	NB and Board meeting
Defendant Exhibit 144	drawing clarifier
Defendant Exhibit 145	Agenda for 6-27-2013 meeting
Defendant Exhibit 146	folder cover compliance schedule
Defendant Exhibit 147	schedule of pretreatment improvements 4-11-2013
Defendant Exhibit 148	B interim limits request
Defendant Exhibit 149	HR Green letter to Fleeman 6-3-2013
Defendant Exhibit 150	2008 Aerator AFE (pt 2)
Defendant Exhibit 151	Preliminary WW Engineering Report NBC-DEF 000225

Defendant Exhibit 152	D design basis WWTP folder cover
Defendant Exhibit 153	Draft basis of Design
Defendant Exhibit 154	E process improvement flow design cover
Defendant Exhibit 155	Preliminary Pond drawing
Defendant Exhibit 156	NB ltr to Angel 10-19-2012
Defendant Exhibit 157	Carmona email to Bachtel 2-13-14
Defendant Exhibit 158	Serra email to Chavel 6-19-13
Defendant Exhibit 159	Carmona email to Vandenberg 6-5-13
Defendant Exhibit 160	Carmona email to Bachtel 2-13-14
Defendant Exhibit 161	Carmona email to Whitson 2-21-14
Defendant Exhibit 162	Carmona email to Whitson 2-21-14
Defendant Exhibit 163	NB ltr to Angel 4-14-14
Defendant Exhibit 164	4-22-14 Ludwig CEQA invitation re plant closure
Defendant Exhibit 165	Kalscheur email to Chavez 1-15-14
Defendant Exhibit 166	Board letter to NB re ROWD addendum 1-31-14
Defendant Exhibit 167	NB ltr re plant closure 1-31-14
Defendant Exhibit 168	Board ltr to NB re draft abatement order 2-18-14
Defendant Exhibit 169	Board letter re plant closure 3-6-14
Defendant Exhibit 170	Board ltr to NB re abatement order 3-24-14
Defendant Exhibit 171	Heron report of waste discharge
Defendant Exhibit 172	Heron report 5-29-12
Defendant Exhibit 173	EPA guidelines
Defendant Exhibit 174	EPA guidelines II
Defendant Exhibit 175	HR Green letter 5-13-13
Defendant Exhibit 176	Angel email to Chavez 6-25-13
Defendant Exhibit 177	Landmark ltr to Angel 7-12-13
Defendant Exhibit 178	HR Green Letter of Transmittal
Defendant Exhibit 179	HR Green Letter of Transmittal 9-17-13
Defendant Exhibit 180	Notice of Determination
Defendant Exhibit 181	Carmona email to Otsuji 4-25-14
Defendant Exhibit 182	Isorena email to Serra 4-25-14
Defendant Exhibit 183	BBK ltr to Okun 7-2-14
Defendant Exhibit 184	ACLC R7-2014-041
Defendant Exhibit 185	ACLC Order R7-2014-0033
Defendant Exhibit 186	LEE ltr to Board 1-30-13
Defendant Exhibit 187	LEE letter of transmittal
Defendant Exhibit 188	LEE & RO local limits study
Defendant Exhibit 189	LEE & RO Industrial pretreatment program 2013
Defendant Exhibit 190	WW discussion timeline May to Sept 2012
Defendant Exhibit 191	City local limits memo
Defendant Exhibit 192	Ltr to Wylie
Defendant Exhibit 193	City ltr to Carmona 11-16-12
Defendant Exhibit 194	Board ltr to NB 11-27-12
Defendant Exhibit 195	Board ltr to Arellano 12-10-12
Defendant Exhibit 196	Wylie email to Angel
Defendant Exhibit 197	NB ltr to Wylie 2-6-12
Defendant Exhibit 198	City Agenda for WWTP 2-1-12
Defendant Exhibit 199	City Agenda for WWTP 2012
Defendant Exhibit 200	Pretreatment submission package
Defendant Exhibit 201	Serra email to Vandenberg
Defendant Exhibit 202	Inspection Team notice
Defendant Exhibit 203	Inspection team notice 8-27-13

Defendant Exhibit 204	Wylie email to Angel 8-21-13
Defendant Exhibit 205	figure 5 drawing
Defendant Exhibit 206	Permit 00-01
Defendant Exhibit 207	Larkin email to Miller
Defendant Exhibit 208	Landmark ltr to Angel
Defendant Exhibit 209	Pyle email to Wylie
Defendant Exhibit 210	Angle email re pretreatment program
Defendant Exhibit 211	Kalscheur email to Board
Defendant Exhibit 212	Brennan email to Angel
Defendant Exhibit 213	NB schedule of pretreatment system
Defendant Exhibit 214	Violation Noted 2007
Defendant Exhibit 215	City ltr to Larkin 1-30-06
Defendant Exhibit 216	City ltr to Larkin 12-11-07
Defendant Exhibit 217	board letter to City 11-2-07
Defendant Exhibit 218	Board ltr to City 10-18-07
Defendant Exhibit 219	Facilities Inpection Report
Defendant Exhibit 220	Board application by City
Defendant Exhibit 221	Board ACLC R7-2004-0026
Defendant Exhibit 222	City ltr to Wylie
Defendant Exhibit 223	City ltr to Larkin
Defendant Exhibit 224	Board memo re City inpection report
Defendant Exhibit 225	App III-2
Defendant Exhibit 226	Board ltr to City re amemdment
Defendant Exhibit 227	City letter to Angel 4-14-08
Defendant Exhibit 228	Board ltr to City re amendment
Defendant Exhibit 229	Board cease amd desist to City \$7-2008-0008
Defendant Exhibit 230	Board draft cease and desist
Defendant Exhibit 231	PG Environmental ltr to Board
Defendant Exhibit 232	City ltr to Angel 1-12-08
Defendant Exhibit 233	City ltr to Angel 10-10-08
Defendant Exhibit 234	Publication notice
Defendant Exhibit 235	Board Special order R7-2008-0069
Defendant Exhibit 236	Board Special Order R7-2008-0069
Defendant Exhibit 237	ATS 5-22-09 report
Defendant Exhibit 238	Vilocation Noted 2008
Defendant Exhibit 239	Mandatory Reporting Requirements 2008
Defendant Exhibit 240	Board ltr to City 2007-0069
Defendant Exhibit 241	Board Special Order R7-2008-0069
Defendant Exhibit 242	Violations Noted July 2008
Defendant Exhibit 243	Violations noted 2008 2nd quarter
Defendant Exhibit 244	Violations May 2008
Defendant Exhibit 245	Violations April 2008
Defendant Exhibit 246	City preliminary design report 2008
Defendant Exhibit 247	City ltr to Wylie 11-13-08
Defendant Exhibit 248	City draft revenue program 4502-110
Defendant Exhibit 249	Brawley WWTP ordinance
Defendant Exhibit 250	City specification 2008-12
Defendant Exhibit 251	City specification 2008-12
Defendant Exhibit 252	Violations Aug 2009
Defendant Exhibit 253	Violations May 2009
Defendant Exhibit 254	Wylie email to Al-Sarabi
Defendant Exhibit 255	Wylie email to Chen

Defendant Exhibit 256	City WWTP May 2008
Defendant Exhibit 257	Durham email to Wylie
Defendant Exhibit 258	Durham email re final summary report
Defendant Exhibit 259	Wylie email to Carmona
Defendant Exhibit 260	Mireles email to Carmona
Defendant Exhibit 261	City dissolved solids study report 2009
Defendant Exhibit 262	board EPA compliance evaluation ltr 2009
Defendant Exhibit 263	Durham email to Wylie
Defendant Exhibit 264	EIWQS data entry form
Defendant Exhibit 265	NPDES form 2A
Defendant Exhibit 266	CIWQS data entry form
Defendant Exhibit 267	EPA report 1-26-10
Defendant Exhibit 268	City sewer plan 2009
Defendant Exhibit 269	Board ltr re 2nd review of City program 5-28-13
Defendant Exhibit 270	Board ltr re review of pretreatment program 3-22-13
Defendant Exhibit 271	LEE & RO letter to transmittal
Defendant Exhibit 272	Board ltr re compliance inspection 3-20-13
Defendant Exhibit 273	Board ltr re ACLC 2013-0028
Defendant Exhibit 274	Board ltr re review of program schedule
Defendant Exhibit 275	City ltr to Board re program review
Defendant Exhibit 276	City ltr to Board re pretreatment program
Defendant Exhibit 277	Board ltr re review of program 9-13-12
Defendant Exhibit 278	LEE letter of transmittal 7-10-12
Defendant Exhibit 279	Bachtel email re project report for City WWTP
Defendant Exhibit 280	City ltr re geothermal development
Defendant Exhibit 281	CDPH ltr to City 8-10-11
Defendant Exhibit 282	Board ltr re EPA compliance
Defendant Exhibit 283	PG Environmental NPDES compliance evaluation
Defendant Exhibit 284	Revised notice of public hearing
Defendant Exhibit 285	Board ltr re staff report
Defendant Exhibit 286	Board cease and desist
Defendant Exhibit 287	City chronology of penalties
Defendant Exhibit 288	Board ltr re staff report
Defendant Exhibit 289	Caromona email to Wylie 9-12-12
Defendant Exhibit 290	Moore email to Angel
Defendant Exhibit 291	Board ltr re second review of WWTP
Defendant Exhibit 292	Board cease and desist 2008-0008
Defendant Exhibit 293	pretreatment submission package outline
Defendant Exhibit 294	City WWTP chronology
Defendant Exhibit 295	Board ltr re compliance inspection report
Defendant Exhibit 296	Carmona email to Kirkeby
Defendant Exhibit 297	Detailed MMP report
Defendant Exhibit 298	Angel draft sig page
Defendant Exhibit 299	article re call call park closed
Defendant Exhibit 300	Wylie email to Mireles
Defendant Exhibit 301	Cleanup and abatement order 2004-0079
Defendant Exhibit 302	Angel email to Wylie re initial comments
Defendant Exhibit 303	memo re City plant 1-26-12
Defendant Exhibit 304	Board ltr re cease and desist 2008-0008
Defendant Exhibit 305	City ltr re pollution prevention plan
Defendant Exhibit 306	City ltr re cease and desist

Defendant Exhibit 307	Berry ltr re City WWTP
Defendant Exhibit 308	City toc
Defendant Exhibit 309	Folder marked 17, 25 26
Defendant Exhibit 310	Board special interrogatories
Defendant Exhibit 311	Folder marked 6-1
Defendant Exhibit 312	Folder marked 12,13, 14 20 - P1
Defendant Exhibit 313	Folder marked 12, 13, 14, 20 - P2
Defendant Exhibit 314	Folder marked 12, 13, 14, 20 - P5
Defendant Exhibit 315	Folder marked 12, 13, 14, 20 - P6
Defendant Exhibit 316	Inspection report 1996
Defendant Exhibit 317	SCAG review report
Defendant Exhibit 318	City ltr to Board 6-20-96
Defendant Exhibit 319	Notice of completion 1996
Defendant Exhibit 320	Article re City's WWTP to upgrade
Defendant Exhibit 321	City ltr re Order 95-014
Defendant Exhibit 322	City ltr re condition of Oakley sewer line
Defendant Exhibit 323	SM checklist
Defendant Exhibit 324	Aquatic consulting report 1998
Defendant Exhibit 325	Aquatic consulting report 09-1998
Defendant Exhibit 326	Aquatic consulting report 10-1998
Defendant Exhibit 327	Aquatic consulting report 9-15-98
Defendant Exhibit 328	Board ltr re quarterly monitoring 95-014
Defendant Exhibit 329	Board ltr reminder re quarterly monitor
Defendant Exhibit 330	SM checklist July 1998
Defendant Exhibit 331	Board order 97-115
Defendant Exhibit 332	Board ltr re request for info 7-27-98
Defendant Exhibit 333	certified mail receipt
Defendant Exhibit 334	record of communication 7-22-98
Defendant Exhibit 335	SM checklist June 1998
Defendant Exhibit 336	Board ltr re treatment program 7-1-98
Defendant Exhibit 337	certified receipt to City
Defendant Exhibit 338	Board ltr re treatment program 7-1-98
Defendant Exhibit 339	City ltr re discharge averages
Defendant Exhibit 340	record of communication 6-18-98
Defendant Exhibit 341	certified mail receipt 7-28-98
Defendant Exhibit 342	SM checklist May 98
Defendant Exhibit 343	Board ltr re total petroleum monitoring
Defendant Exhibit 344	certified mail 6-18-98
Defendant Exhibit 345	SM checklist April 1998
Defendant Exhibit 346	SM checklist March 1998
Defendant Exhibit 347	Board ltr re failure to submit monitoring
Defendant Exhibit 348	City app for minor subdivision
Defendant Exhibit 349	City ltr re BPM 97-04
Defendant Exhibit 350	Brawley letter record of communicaiton
Defendant Exhibit 351	City ltr re status of WWTP expansion
Defendant Exhibit 352	Board ltr re reminder for monitoring 95-014
Defendant Exhibit 353	record of communication 2-18-98
Defendant Exhibit 354	Board ltr re Order 95-014
Defendant Exhibit 355	certified mail receipt 2-18-98
Defendant Exhibit 356	SM Checklist 2-3-98
Defendant Exhibit 357	SM checklist 6-8-98
Defendant Exhibit 358	SM Checklist 1-21-98

Defendant Exhibit 359	City ltr re contract 96-451
Defendant Exhibit 360	folder A99 1
Defendant Exhibit 361	Board ltr re WWTP 95-014
Defendant Exhibit 362	certified mail receipt 5-27-99
Defendant Exhibit 363	DWR meeting minutes
Defendant Exhibit 364	Mooney report
Defendant Exhibit 365	Board monitoring report
Defendant Exhibit 366	Board ltr re NPDES application
Defendant Exhibit 367	certified mail receipt 5-17-99
Defendant Exhibit 368	Board ltr re time for 99-054
Defendant Exhibit 369	certified mail receipt 5-4-98
Defendant Exhibit 370	record of communicaiton 4-26-99
Defendant Exhibit 371	Board ltr re Methyl Ether
Defendant Exhibit 372	certified mail receipt 4-23-99
Defendant Exhibit 373	City ltr re 4-1-99 Board ltr
Defendant Exhibit 374	Inspection Report 3-30-99
Defendant Exhibit 375	SM checklist Feb 99
Defendant Exhibit 376	Board ltr re quarterly monitoring 95-014
Defendant Exhibit 377	City ltr re expansion
Defendant Exhibit 378	City council agenda 99
Defendant Exhibit 379	City agreement with Psomas
Defendant Exhibit 380	City ltr re pretreatment 1-26-99
Defendant Exhibit 381	Report December 1998
Defendant Exhibit 382	Aquatic report 12-23-98
Defendant Exhibit 383	City master plan WWTP
Defendant Exhibit 384	master plan 4.3.5
Defendant Exhibit 385	Ex D method of pay
Defendant Exhibit 386	Proposed agreement 1-8-99
Defendant Exhibit 387	Psomas ltr to City 12-16-98
Defendant Exhibit 388	reocrd of communication 12-31-98
Defendant Exhibit 389	Folder A99 1 WWTP
Defendant Exhibit 390	Board ltr re notice of noncompliance
Defendant Exhibit 391	SM checklist Nov 99
Defendant Exhibit 392	City ltr re non-compliance notice
Defendant Exhibit 393	Board ltr re bioassay toxicity
Defendant Exhibit 394	certified mail receipt 11-15
Defendant Exhibit 395	Board ltr re change in personnel
Defendant Exhibit 396	SM checklist Oct 99
Defendant Exhibit 397	City ltr re letter of non-compliance
Defendant Exhibit 398	record of communication 7-30-99
Defendant Exhibit 399	NA Bank funding ltr
Defendant Exhibit 400	Board ltr re enforcement of bacteria objectives
Defendant Exhibit 401	City executive summary fax 4-20-00
Defendant Exhibit 402	SM checklist 1-31-00
Defendant Exhibit 403	AOO 1 folder
Defendant Exhibit 404	folder 10-2000 to 12-2000
Defendant Exhibit 405	Board ltr re requirements for toxics
Defendant Exhibit 406	Violations 12-29-00
Defendant Exhibit 407	Effluent discharge report Nov 2000
Defendant Exhibit 408	City ltr re status of upgrade
Defendant Exhibit 409	Violations 12-29-00
Defendant Exhibit 410	City ltr re plant upgrade

Defendant Exhibit 411	Board ltr re request for status
Defendant Exhibit 412	mail receipt
Defendant Exhibit 413	Inspection report 00-087
Defendant Exhibit 414	Violations 11-1-00
Defendant Exhibit 415	Board ltr re reminder 00-087
Defendant Exhibit 416	folder cover A01 1
Defendant Exhibit 417	Carmona sig 00-087
Defendant Exhibit 418	Notice of determination 1-31-01
Defendant Exhibit 419	draft scope of work City WWTP
Defendant Exhibit 420	Berryman ltr re WWTP improvements
Defendant Exhibit 421	Board ltr re effluent monitoring reports
Defendant Exhibit 422	City ltr re upgrade start
Defendant Exhibit 423	Berryman ltr re monitoring wells
Defendant Exhibit 424	Board ltr re notice of non-compliance
Defendant Exhibit 425	mail receipt 4-10-01
Defendant Exhibit 426	City request for proposals
Defendant Exhibit 427	folder 6-2001 to 8-2001
Defendant Exhibit 428	Board ACLC 01-194
Defendant Exhibit 429	City ltr re status report 5
Defendant Exhibit 430	legal authority checklist
Defendant Exhibit 431	proposed ordinance 2001
Defendant Exhibit 432	Board ltr re ACLC supplemental projects
Defendant Exhibit 433	BB ltr for final occupancy
Defendant Exhibit 434	Board ltr re rescission of 2003-0021
Defendant Exhibit 435	Scope of work draft
Defendant Exhibit 436	City water program report 6-2001
Defendant Exhibit 437	City ltr re sludge digesters
Defendant Exhibit 438	Board ltr re water code 13383
Defendant Exhibit 439	Inspection report 12-1-02
Defendant Exhibit 440	City toxicity evaluation
Defendant Exhibit 441	Violations 12-19-03
Defendant Exhibit 442	City WWTP ammonia removal draft
Defendant Exhibit 443	Violations 10-1-03
Defendant Exhibit 444	Scope of work draft City WWTP
Defendant Exhibit 445	Violations 3-19-04
Defendant Exhibit 446	Board ltr re EPA compliance
Defendant Exhibit 447	City ltr re Nolte study
Defendant Exhibit 448	Violations 2-17-04
Defendant Exhibit 449	Board ltr re renewal of 00-087
Defendant Exhibit 450	City ltr re TIE study
Defendant Exhibit 451	Nolte basis design report
Defendant Exhibit 452	City ltr re Feb 2005 operations
Defendant Exhibit 453	Board ltr re proposed 2005-0021
Defendant Exhibit 454	Effluent report Apr 2005
Defendant Exhibit 455	Order 2005-0021
Defendant Exhibit 456	Board ltr re EPA inspection report
Defendant Exhibit 457	Senate ltr re plant closure
Defendant Exhibit 458	email re Administrative Civil Liability Complaint R7-2014-0041 Against NBC
Defendant Exhibit 459	ACLC 2014-0041
Defendant Exhibit 460	ACLC 20140041
Defendant Exhibit 461	ACLC 2014-0041

Defendant Exhibit 462	Compliance Plan, Prelim Engr & Interim Limits
Defendant Exhibit 463	ltr-071213-RWQCBsubmittal
Defendant Exhibit 464	Liner system design for Pond 1 (anaerobic)
Defendant Exhibit 465	Meeting Agenda
Defendant Exhibit 466	National Beef - well information
Defendant Exhibit 467	National Beef discussion points
Defendant Exhibit 468	National Beef discussion points for the 1 pm Aug 21st
Defendant Exhibit 469	RE Meeting Agenda
Defendant Exhibit 470	RE Meeting Agenda 12-12-13
Defendant Exhibit 471	RE Meeting Agenda Ludwig
Defendant Exhibit 472	RE National Beef - well information
Defendant Exhibit 473	email : Any time to talk today
Defendant Exhibit 474	Completed project 12-31-2012
Defendant Exhibit 475	FS Brawley Wastewater
Defendant Exhibit 476	INFLUENT DATA 2008, 2009, 2010, 2011
Defendant Exhibit 477	FW 2008-2010 NB Composites
Defendant Exhibit 478	FW 2011-2013 NB composites
Defendant Exhibit 479	FW 2011-2013 NB composites
Defendant Exhibit 480	FW NB Ammonia
Defendant Exhibit 481	RE 2011-2013 NB composites
Defendant Exhibit 482	Compliance Plan, Prelim Engr & Interim Limits
Defendant Exhibit 483	Industrial Pretreatment Program and Local Limits
Defendant Exhibit 484	Re Draft City Permit for NBC
Defendant Exhibit 485	Attachment D - WWTP Monthly Ammonia Load
Defendant Exhibit 486	Attachment E - WWTP Daily Ammonia Load
Defendant Exhibit 487	Attachment G - Monthly BOD and TSS Load from NBC
Defendant Exhibit 488	Attachment I - Brawley WWTP BOD-TSS-Bacteria Violations
Defendant Exhibit 489	2014.02.18 ORDER R7-2014-0033 NATIONAL BEEF
Defendant Exhibit 490	2014.03.20 ORDER R7-2014-0033 NATIONAL BEEF CALIFORNIA, LP
Defendant Exhibit 491	2014.04.11 NATIONAL BEEF ACLC R7-2014-0041 COMPLAINT
Defendant Exhibit 492	2014.04.16 ACLC R7-2014-0041 ATTACHMENT D
Defendant Exhibit 493	Board Order R7-2010-0022
Defendant Exhibit 494	Transmittal Letter for City of Brawley Local Limits Study_rec 5.8.13
Defendant Exhibit 495	Brawley Local Limits Study Report - Final
Defendant Exhibit 496	2013.07.18 EMAIL TO CITY OF BRAWLEY ON STATUS OF PRETREATMENT PROGRAM SUBMISSION
Defendant Exhibit 497	2014.03.20 RESOLUTION R7-2014-0020 CITY OF BRAWLEY APPROVAL OF PRETREATMENT PROGRAM SUBMISSION
Defendant Exhibit 498	2014.07.10 DRAFT CEI FOR CITY OF BRAWLEY 07.10.14
Defendant Exhibit 499	R7-2010-0022_Brawley
Defendant Exhibit 500	2009.6.11_Att_Brawley Legal Review Checklist_Final
Defendant Exhibit 501	2009.6.15_ATT_Brawley Legal Review Checklist_Final

Defendant Exhibit 502	2013.03.22 EMAIL TO CITY OF BRAWLEY ON FIRST REVIEW OF PRETREATMENT PROGRAM SUBMISSION ATTCH1
Defendant Exhibit 503	2013.03.22 REVIEW SUMMARY REPORT TO CITY OF BRAWLEY ON FIRST REVIEW OF PRETREATMENT PROGRAM SUBMISSION
Defendant Exhibit 504	2013.05.13 EMAIL ON SECOND PRETREATMENT PROGRAM SUBMISSION LOCAL LIMITS STUDY REPORT ATTCH1
Defendant Exhibit 505	2013.05.13 SECOND PRETREATMENT PROGRAM SUBMISSION LOCAL LIMITS STUDY REPORT
Defendant Exhibit 506	2013.05.23 EMAIL TO CITY OF BRAWLEY FOR SECOND REVIEW COMMENTS ON PRETREATMENT PROGRAM SUBMISSION ATTCH 2
Defendant Exhibit 507	2013.05.23 SECOND REVIEW COMMENTS OF REVISED SEWER USE ORDINANCE FOR CITY OF BRAWLEY PRETREATMENT PROGRAM SUBMISSION
Defendant Exhibit 508	2014.01.03 FINAL CHECKLIST FOR REVIEW COMMENTS BRAWLEY PRETREATMENT PROGRAM SUBMISSION
Defendant Exhibit 509	2014.05.14 BRAWLEY LOCAL LIMIT STUDY
Defendant Exhibit 510	Form_200
Defendant Exhibit 511	R7-2010-0022_Brawley
Defendant Exhibit 512	Black and Veach - edits
Defendant Exhibit 513	HR Green Report w-appendix final
Defendant Exhibit 514	2009.5.19_Scanned Documents for Brawley PTP
Defendant Exhibit 515	0033natl_beef
Defendant Exhibit 516	National Beef Regional water letter 2-12-14 (Sen. Hueso 40th District).
Defendant Exhibit 517	2011 Oct-Nov-Dec Loadings
Defendant Exhibit 518	001 National Beef Readings
Defendant Exhibit 519	Nat'l Beef Rates and Calcs - 1005 monitoring results
Defendant Exhibit 520	2008 Jul-Aug-Sept Loading Rates
Defendant Exhibit 521	2008 Oct-Nov-Dec Loading Rates
Defendant Exhibit 522	2009 Jan-Feb-Mar Loading Rates
Defendant Exhibit 523	2009 Apr May June Loading Rates
Defendant Exhibit 524	2009 Jul Aug Sept Loading Rates
Defendant Exhibit 525	2009 Oct Nov Dec Loading Rates
Defendant Exhibit 526	2010 Jan-Feb-Mar Loading Rates
Defendant Exhibit 527	2010 Apr-May-June Loading Rates
Defendant Exhibit 528	2010 Jul-Aug-Sept Loading Rates
Defendant Exhibit 529	2010 Oct-Nov-Dec Loading Rates
Defendant Exhibit 530	2011 Jan-Feb-Mar Loading Rates
Defendant Exhibit 531	2011 Apr-May-Jun Loadings
Defendant Exhibit 532	2011 Jul-Aug-Sept Loading Rates
Defendant Exhibit 533	2011 Oct-Nov-Dec Loadings
Defendant Exhibit 534	2012 Jan-Feb-Mar
Defendant Exhibit 535	2012 Apr-May-Jun
Defendant Exhibit 536	2012 Jul-Aug-Sep
Defendant Exhibit 537	2012 Oct-Nov-Dec
Defendant Exhibit 538	2013 Jan Feb Mar

Defendant Exhibit 539	2013 Apr May June
Defendant Exhibit 540	2013 July Aug Sep
Defendant Exhibit 541	2013 Oct Nov Dec
Defendant Exhibit 542	2011 Jan-Feb-Mar Loading Rates
Defendant Exhibit 543	001 National Beef Ammonia
Defendant Exhibit 544	2009.6.11_Att_Brawley Document Submission Evaluation
Defendant Exhibit 545	2009.6.15_ATT_Brawley Document Submission Evaluation 2009_Final Report
Defendant Exhibit 546	ADOPTED NBC-CAO
Defendant Exhibit 547	RE: City of Brawley v Nolte Associates
Defendant Exhibit 548	National Beef Regional water letter 2-12-14
Defendant Exhibit 549	NBC-CAO (Revised Draft 3.19.2014)(Revised Clean Version)
Defendant Exhibit 550	NBC-CAO (Revised Draft 3.19.2014)(Revised Redline Version)
Defendant Exhibit 551	RE: Separation of Functions Issue
Defendant Exhibit 552	City of Brawley Settlement Agreement (8.6.2013)
Defendant Exhibit 553	NBC-CAO (Final As Adopted with all Errata Included)(TAV 3.22.2014)
Defendant Exhibit 554	NBC-CAO (Revised Draft 3.19.2014)(Revised Clean Version)
Defendant Exhibit 555	NBC-CAO (Revised Draft 3.19.2014)(Revised Redline Version)
Defendant Exhibit 556	NBC-CAO (Revised Draft 3.19.2014)(Revised Clean Version__5pm Version)
Defendant Exhibit 557	NBC-CAO (Revised Draft 3.19.2014)(Revised Redline Version__5pm Version)
Defendant Exhibit 558	NBC-CAO (Revised Draft 3.20.2014 (Additional Redline Changes over Clean Version)(530am)
Defendant Exhibit 559	PRA Request R. Barrett
Defendant Exhibit 560	ACLC 0041
Defendant Exhibit 561	FW: Brawley Pretreatment Program
Defendant Exhibit 562	NBC-CAO (Revised Draft 3.20.2014)(Complete Clean Version)
Defendant Exhibit 563	RE: Governor Brown's Office of Business and Economic Development and National Beef, Brawley CA
Defendant Exhibit 564	R7-2013-0028 ACLC
Defendant Exhibit 565	Governor Brown's Office of Business and Economic Development and National Beef, Brawley CA
Defendant Exhibit 566	Governor Brown's Office of Business and Economic Development and National Beef, Brawley CA2
Defendant Exhibit 567	R7-2013-0028_ACLC
Defendant Exhibit 568	National Beef Regional water letter 2-12-14
Defendant Exhibit 569	RE: Separation of Functions Issue
Defendant Exhibit 570	Re: Water Quality Public Documents
Defendant Exhibit 571	RE: Separation of Functions Issue 2
Defendant Exhibit 572	noreply_22-18@waterboards.ca.gov_20140812_192555

Defendant Exhibit 573	PRA Request R. Barrett
Defendant Exhibit 574	Mail.txt.msg
Defendant Exhibit 575	National Beef Regional water letter
Defendant Exhibit 576	NB Scoping Meeting Invitation 042214
Defendant Exhibit 577	Letter Cancelling Scoping Meeting
Defendant Exhibit 578	nbc_aclc_0041
Defendant Exhibit 579	Fwd: National Beef
Defendant Exhibit 580	RE: Governor Brown's Office of Business and Economic Development and National Beef, Brawley CA
Defendant Exhibit 581	Interim progress draft
Defendant Exhibit 582	FW: ASCE/APWA February Meeting
Defendant Exhibit 583	RE: City of Brawley v Nolte Associates
Defendant Exhibit 584	11.18.08_Response to Ken Berry_tab
Defendant Exhibit 585	RE: National Beef
Defendant Exhibit 586	Enclosure D - Infeasibility Report Outline and Antideg
Defendant Exhibit 587	Enclosure D - Infeasibility Report Outline and Antideg_Tt DRAFT_31July07_(
Defendant Exhibit 588	Further Clarifications and Comments
Defendant Exhibit 589	SB 709_SB 2165 QA 041701
Defendant Exhibit 590	ms4guide_withappendixa_1
Defendant Exhibit 591	ms4guide_appendicesb-d_1
Defendant Exhibit 592	Storm Water BMPS - 8-25-08
Defendant Exhibit 593	ms4_program_performance_webcast_june_2_08_v5_---_without_polls.
Defendant Exhibit 594	ms4_compliance-latest_version
Defendant Exhibit 595	Regional Board 7_ Pretreatment Registration Brochure_2011
Defendant Exhibit 596	R7-2008-0008_Brawley CDO-jla_DONE
Defendant Exhibit 597	Gary Burroughs Ltr
Defendant Exhibit 598	20110810LR Brawley
Defendant Exhibit 599	Fwd: FW: Monitoring Data for Local Limits Study
Defendant Exhibit 600	08_0027brawley
Defendant Exhibit 601	05_0021wdr
Defendant Exhibit 602	2009-10 IUP List v3 Compilatiion
Defendant Exhibit 603	Fwd: RE: Brawley Project
Defendant Exhibit 604	Re: Brawley Project
Defendant Exhibit 605	Brawley's Violations from July-Dec 2007
Defendant Exhibit 606	ltr-071213-RWQCBsubmittal-NB
Defendant Exhibit 607	Brawley Inspection Report DRAFT
Defendant Exhibit 608	Rowd\Final draft
Defendant Exhibit 609	Draft Agenda for Palm Desert 1-21-08
Defendant Exhibit 610	Draft Agenda for Imperial Valley 1-22-23-08
Defendant Exhibit 611	Fwd_ Re_ Telecom on 1-23-07 to discuss City of Brawley
Defendant Exhibit 612	Draft Agenda for Palm Desert
Defendant Exhibit 613	Draft Agenda for Imperial Valley 1-22-23-08.
Defendant Exhibit 614	2-28-2013 ABENEDICT OFFICE OF ENFORCEMENT ACLC - CITY OF BRAWLEY
Defendant Exhibit 615	BEN Model Guidance
Defendant Exhibit 616	luk_10k_2012

Defendant Exhibit 617	FW: ASCE/APWA February Meeting
Defendant Exhibit 618	2011 Jan-Feb-Mar Loading Rates
Defendant Exhibit 619	2013 Jan Feb Mar
Defendant Exhibit 620	2013 Jan Feb Mar
Defendant Exhibit 621	001 National Beef Readings
Defendant Exhibit 622	NB, CITY'S INF AND EFF NH3 CHARTS 06,07,08
Defendant Exhibit 623	Water Quality Public Documents
Defendant Exhibit 624	National Beef Regional water letter 2-12-14
Defendant Exhibit 625	National Beef discussion points for the 1 pm Aug. 21st meeting with the Regional Board
Defendant Exhibit 626	National Beef discussion points for the 1 pm Aug. 21st meeting
Defendant Exhibit 627	RE: Closure of the National Beef Brawley facility
Defendant Exhibit 628	0033natl_beef
Defendant Exhibit 629	2008_07_15_guide_mpp_final_tdd08
Defendant Exhibit 630	City to Board includes flow reports from 2009 to 2012
Defendant Exhibit 631	RE: Meeting Agenda
Defendant Exhibit 632	RE: Meeting Agenda
Defendant Exhibit 633	RE: Meeting Agenda 2
Defendant Exhibit 634	National Beef - well information
Defendant Exhibit 635	Re: National Beef
Defendant Exhibit 636	Re: National Beef 3
Defendant Exhibit 637	NB vs. Brawley DATA
Defendant Exhibit 638	Fwd: National Beef discussion points for the 1 pm Aug. 21st meeting with the Regional Board and City of Brawley
Defendant Exhibit 639	National Beef discussion points for the 1 pm Aug. 21st meeting with the Regional Board and City of Brawley
Defendant Exhibit 640	National Beef - well information
Defendant Exhibit 641	RE: Brawley National Beef plant information request
Defendant Exhibit 642	PRA Request R. Barrett
Defendant Exhibit 643	RE: Brawley National Beef plant information request
Defendant Exhibit 644	NOI
Defendant Exhibit 645	RE: Brawley National Beef plant information request
Defendant Exhibit 646	RE: Brawley National Beef plant information request
Defendant Exhibit 647	Rowd\Final
Defendant Exhibit 648	Letter to K. Johnson - USEPA (June 17, 2014)
Defendant Exhibit 649	Invoice 2419
Defendant Exhibit 650	Invoice 2448
Defendant Exhibit 651	RB Production-TheBenHelpSystem
Defendant Exhibit 652	RBProduction-LeuvadiaNationalCorp2012AnnualReport
Defendant Exhibit 653	Timeline of ww work as of 09 13 13
Defendant Exhibit 654	Colorado River Basin Regional Water Quality Control Board
Defendant Exhibit 655	ACIC Ex 1

Defendant Exhibit 656	ACLC Ex 3
Defendant Exhibit 657	ACLC Ex 4
Defendant Exhibit 658	ACLC Ex 5
Defendant Exhibit 659	ACLC Ex 24
Defendant Exhibit 660	Witness list
Defendant Exhibit 661	nolte symbols
Defendant Exhibit 662	nolte symbols
Defendant Exhibit 663	nolte symbols
Defendant Exhibit 664	nolte symbols
Defendant Exhibit 665	ACLC R7-2014-0041
Defendant Exhibit 666	Draft Order 0033
Defendant Exhibit 667	Form WW chart
Defendant Exhibit 668	ADOPTED BOARD ORDER R7-2010-0022 BRAWLEY 05.20.10
Defendant Exhibit 669	2011.9.08_ATT_Legal Review Checklist 2011- Template
Defendant Exhibit 670	2013.1.30_ATT2_Brawley Local Limits Study Report - Final Draft
Defendant Exhibit 671	Brawley - Subpoena for Records and Documents Index dated Dec
Defendant Exhibit 672	2008_07_15_guide_mpp_final_tdd06
Defendant Exhibit 673	2008_07_15_guide_mpp_final_tdd11
Defendant Exhibit 674	Metered water study 2008
Defendant Exhibit 675	Resolution 2009-34
Defendant Exhibit 676	City letter to NB 2002
Defendant Exhibit 677	Brawley Beef 2004 memo
Defendant Exhibit 678	rate worksheet
Defendant Exhibit 679	Email 2010 re calculations
Defendant Exhibit 680	Email 2010 re violation
Defendant Exhibit 681	City ltr re 2000 agreement
Defendant Exhibit 682	NB utility bill 2012
Defendant Exhibit 683	January-March loading rates
Defendant Exhibit 684	January-March 2013 loading rates
Defendant Exhibit 685	ammonia removal drawing
Defendant Exhibit 686	HR Green aff
Defendant Exhibit 687	City of Brawley Ordinance
Defendant Exhibit 688	2008 Aerator AFE (pt 3)
Defendant Exhibit 689	City of Brawley Ordinance with 30 percent Ammonia reference
Defendant Exhibit 690	Waste Water Spending
Defendant Exhibit 691	drawing 001
Defendant Exhibit 692	AFE for Belt Press dated 12-22-2010
Defendant Exhibit 693	AFE Brawley Pond #3 Cleanout supplemental dated 1-22- 2010 in the amount of \$492,675
Defendant Exhibit 694	AFE Brawley Pond #3 Cleanout dated 2-06-2009 in the amount of \$49,838
Defendant Exhibit 695	AFE Sludge Removal test system dated July 2010 in the amount of \$146,000
Defendant Exhibit 696	AFE execution page for Sludge Removal test system dated 7-28-2010 in the amount of \$146,000
Defendant Exhibit 697	2007 Aerator AFE
Defendant Exhibit 698	2007 Aeration Basin #1 Email

Defendant Exhibit 699	2007 Aerator Diagram
Defendant Exhibit 700	2007 #1Aeration Basin email
Defendant Exhibit 701	2007 #1Aeration Basin diagram
Defendant Exhibit 702	2007 Aerator installation email
Defendant Exhibit 703	April 2008 Aeration in Pond 2
Defendant Exhibit 704	Jose_Angel_Exhibit_9
Defendant Exhibit 705	Jose_Angel_Exhibit_8
Defendant Exhibit 706	Jose_Angel_Exhibit_7
Defendant Exhibit 707	1906678-Jonathan Rokke
Defendant Exhibit 708	1989.9.25 Ltr. from EPA to Chairman State Water Resources
Defendant Exhibit 709	Jose Angel Depo
Defendant Exhibit 710	Jose_Angel_Exhibit_1
Defendant Exhibit 711	Jose_Angel_Exhibit_10
Defendant Exhibit 712	Jose_Angel_Exhibit_11
Defendant Exhibit 713	Jose_Angel_Exhibit_12
Defendant Exhibit 714	Jose_Angel_Exhibit_13
Defendant Exhibit 715	Jose_Angel_Exhibit_14
Defendant Exhibit 716	Jose_Angel_Exhibit_15
Defendant Exhibit 717	Jose_Angel_Exhibit_16
Defendant Exhibit 718	Jose_Angel_Exhibit_17
Defendant Exhibit 719	Jose_Angel_Exhibit_18
Defendant Exhibit 720	Jose_Angel_Exhibit_2
Defendant Exhibit 721	Jose_Angel_Exhibit_3
Defendant Exhibit 722	Jose_Angel_Exhibit_4
Defendant Exhibit 723	Jose_Angel_Exhibit_5
Defendant Exhibit 724	Jose_Angel_Exhibit_6
Defendant Exhibit 725	Baffle Writeup 08 28 07
Defendant Exhibit 726	BR Baffle Update Budget Summ 08 28 07
Defendant Exhibit 727	BR Baffle AFE
Defendant Exhibit 728	Brawley Baffle Supp Final 08 29 07b
Defendant Exhibit 729	Memo Status Report 01 07 08
Defendant Exhibit 730	National Beef-Brawley, CA Baffle
Defendant Exhibit 731	Phasell_index
Defendant Exhibit 732	Phasell_cover
Defendant Exhibit 733	Phasell_D001
Defendant Exhibit 734	Phasell_D002
Defendant Exhibit 735	Phasell_D003
Defendant Exhibit 736	Phasell_D004
Defendant Exhibit 737	Phasell_D005
Defendant Exhibit 738	Phasell_D006
Defendant Exhibit 739	Phasell_D007
Defendant Exhibit 740	ntlbindx
Defendant Exhibit 741	NBC cover
Defendant Exhibit 742	ntl00120
Defendant Exhibit 743	ntl00400
Defendant Exhibit 744	ntl00810
Defendant Exhibit 745	ntl01110
Defendant Exhibit 746	ntl01325
Defendant Exhibit 747	ntl01330
Defendant Exhibit 748	ntl01780
Defendant Exhibit 749	ntl01785

Defendant Exhibit 750	NTLB02301
Defendant Exhibit 751	NTLB02510
Defendant Exhibit 752	ntlb02535
Defendant Exhibit 753	Memo Mgt Conf Baffle Novem 2007
Defendant Exhibit 754	Sheet 07 - Hydrogen Sulfide Scrubber System
Defendant Exhibit 755	Sheet 06 - Pipe Details Near Boiler Building
Defendant Exhibit 756	Sheet 05 - Pipe Layout Detail
Defendant Exhibit 757	Sheet 04 - Blower Building Piping Layout
Defendant Exhibit 758	Sheet 03 - Process Flow Diagram
Defendant Exhibit 759	Sheet 01 - Cover Sheet
Defendant Exhibit 760	Sheet 02 - Site Map and Pipe Layout
Defendant Exhibit 761	Change Order 1
Defendant Exhibit 762	PE Verification
Defendant Exhibit 763	BR Biogas AFE Final
Defendant Exhibit 764	2009 Pond 3 Clean out
Defendant Exhibit 765	Sludge Capacity Pond 3 01 03 10
Defendant Exhibit 766	2009 Pond 3 Clean out diagram
Defendant Exhibit 767	2009 Pond 3 Cleanout Diagram 2
Defendant Exhibit 768	2010 Pond 3 clean out supplemental AFE
Defendant Exhibit 769	2010 Pond 3 Clean out AFE detail
Defendant Exhibit 770	200,000 proposal
Defendant Exhibit 771	700dtproposal
Defendant Exhibit 772	National Beef Proposal
Defendant Exhibit 773	PO# 431576
Defendant Exhibit 774	Proposal Long Term
Defendant Exhibit 775	Budget Summary 01 20 10
Defendant Exhibit 776	Cost Est - Sludge Remov - Pond 3
Defendant Exhibit 777	BRAWLEY SLUDGE REMOVAL PROCESS 12 18 09
Defendant Exhibit 778	2009 Pond 3 Cleanout AFE sig page
Defendant Exhibit 779	2010 Pond 3 Cleanout AFE
Defendant Exhibit 780	2010 Pond 3 Cleanout Supp AFE
Defendant Exhibit 781	Budget Summary 1-20-10
Defendant Exhibit 782	Pond 3 Clean AFE 900 Tons
Defendant Exhibit 783	Pond 3 Cleanout Chronology
Defendant Exhibit 784	Pond 3 Full Clean AFE
Defendant Exhibit 785	2010 Pond 3 Solids Removal
Defendant Exhibit 786	2011 Biogas lagoon cover repairs
Defendant Exhibit 787	BRAWLEY WW PRETREATMENT_SLUDGE SYSTEM w BELT PRESS
Defendant Exhibit 788	Action Plan 7-17-12
Defendant Exhibit 789	1774- National Beef Brawley
Defendant Exhibit 790	Rowd.zip?Rowd\Final draft
Defendant Exhibit 791	ROWD Original Submitted 06 28 11
Defendant Exhibit 792	Lagoon Solids Removal Log July 2012
Defendant Exhibit 793	BR Wastewater 3C Dredge_Mods BS
Defendant Exhibit 794	Brawley Immediate DAF & Dredge AFE 8-17-12 rev 1a
Defendant Exhibit 795	&R Proposal - MF
Defendant Exhibit 796	ltr-oramat-082113
Defendant Exhibit 797	BR WWastewater Permit Application Dischg Pt01_submitted_07 18 13
Defendant Exhibit 798	WW Upgrade Schedule

Defendant Exhibit 799	Brawley Slug Control Plan_04 19 13_Final
Defendant Exhibit 800	System Overview Document 6-19-13
Defendant Exhibit 801	LONG TERM IMPROVEMENTS PFD 061313
Defendant Exhibit 802	POND 2 PHASES 6 6 13 POND
Defendant Exhibit 803	BR WW Cost Estimates 7-15-13
Defendant Exhibit 804	Design Basis & WW Improvements Overview 6-26-13
Defendant Exhibit 805	BR SANITARY DIVERSION 5 15 13
Defendant Exhibit 806	BR SANITARY DIVERSION 5 11 13
Defendant Exhibit 807	NB CEQA Project Description rev 101413
Defendant Exhibit 808	Pond Modifications Schedule 6-25-13
Defendant Exhibit 809	pro-061013-NationalBeefRetainer_Agreement
Defendant Exhibit 810	-PO-Summary-040814
Defendant Exhibit 811	NB Draft Initial Study 020714r7 With Figs
Defendant Exhibit 812	P001-R1 HR GREEN WW TREATMENT PROCESS FLOW DIAGRAM
Defendant Exhibit 813	rpt-090913-NB-GWimpactStudy-DRAFT
Defendant Exhibit 814	Regional WQCBoard Order R7-2005-0028 - City of Brawley
Defendant Exhibit 815	2002-07-15 City Ltr to Brawley to confirm commitment
Defendant Exhibit 816	BR WW Permit Limits
Defendant Exhibit 817	BR WW Test Results - March 2008 to 03 28 14_w history
Defendant Exhibit 818	Heron Report to Board
Defendant Exhibit 819	2001-11-20 City Wastewater Pretreatment Ordinance
Defendant Exhibit 820	2001-12-21 ltr. from City to Beck re. 3-11-2003
Defendant Exhibit 821	BR Wastewater Electrical Upgrade 8-12-12
Defendant Exhibit 822	Sewer Reroute 8-11-12-Model
Defendant Exhibit 823	Sewer Reroute Middle View
Defendant Exhibit 824	Sewer Reroute North View
Defendant Exhibit 825	Sewer Reroute South View
Defendant Exhibit 826	Letter 11-21-2012 re Discharge Pt 2 Elimination
Defendant Exhibit 827	Letter 7-26-2012
Defendant Exhibit 828	letter 9-7-2012
Defendant Exhibit 829	Letter 8-10-12
Defendant Exhibit 830	Letter 1-16-2013
Defendant Exhibit 831	Letter Slug Control Plan 4-5-2013
Defendant Exhibit 832	letter 9-21-2012
Defendant Exhibit 833	Letter 7-06-2012
Defendant Exhibit 834	Proposed Local Limits 5-8-2013
Defendant Exhibit 835	City of BR NOV 01 14 10
Defendant Exhibit 836	City of BR NOV 01 27 12
Defendant Exhibit 837	City of BR NOV 02 22 11
Defendant Exhibit 838	City of BR NOV 02 23 12
Defendant Exhibit 839	City of BR NOV 03 30 12
Defendant Exhibit 840	City of BR NOV 05 12 09
Defendant Exhibit 841	City of BR NOV 05 24 11
Defendant Exhibit 842	City of BR NOV 05 30 12
Defendant Exhibit 843	City of BR NOV 06 16 11
Defendant Exhibit 844	City of BR NOV 06 24 09

Defendant Exhibit 845	City of BR NOV 07 13 11
Defendant Exhibit 846	City of BR NOV 07 15 09
Defendant Exhibit 847	City of BR NOV 07 16 12
Defendant Exhibit 848	City of BR NOV 08 17 09
Defendant Exhibit 849	City of BR NOV 08 23 12
Defendant Exhibit 850	City of BR NOV 09 09 10
Defendant Exhibit 851	City of BR NOV 09 12 12
Defendant Exhibit 852	City of BR NOV 10 19 12
Defendant Exhibit 853	City of BR NOV 11 26 12
Defendant Exhibit 854	City of BR NOV 12 09 10
Defendant Exhibit 855	City of BR NOV 12 15 09
Defendant Exhibit 856	City of BR NOV 12 20 11
Defendant Exhibit 857	City of BR NOV 12 20 12
Defendant Exhibit 858	NOV 7-11-13
Defendant Exhibit 859	NOV123113
Defendant Exhibit 860	Water Supply Ltr City of BR 05 13 09
Defendant Exhibit 861	BR--Water Rate Increase from BW
Defendant Exhibit 862	City Pres 06 21 11_final
Defendant Exhibit 863	Letter 7-6-2012
Defendant Exhibit 864	City of BR NOV 01 15 13
Defendant Exhibit 865	City of BR NOV 01 15 14 _retroactive
Defendant Exhibit 866	City of BR NOV 03 08 11
Defendant Exhibit 867	City of BR NOV 04 20 11
Defendant Exhibit 868	City of BR NOV 06 16 11
Defendant Exhibit 869	City of BR NOV 06 19 12
Defendant Exhibit 870	City of BR NOV 07 11 13
Defendant Exhibit 871	City of BR NOV 07 13 10
Defendant Exhibit 872	City of BR NOV 08 13 10
Defendant Exhibit 873	City of BR NOVs 12 15 09 _01 15 10 _02 08 10
Defendant Exhibit 874	City of BR Appeal Deny 08 20 09
Defendant Exhibit 875	ROWD Original Submitted 06 28 11
Defendant Exhibit 876	DRAFT Ltr to RWQCB 12 19 12
Defendant Exhibit 877	Ltr to GBurroughs Final 06 01 09
Defendant Exhibit 878	NB Ca WW Charges 09 to Pres_Mnth
Defendant Exhibit 879	NB Ca WW Charges 09 to Pres
Defendant Exhibit 880	NB Ca WW Charges 09 to Pres
Defendant Exhibit 881	NB Ca WW Charges 09 to Pres_Mnth
Defendant Exhibit 882	WW Pub Notice Costs
Defendant Exhibit 883	Brawley acl order 2008_0043 apx A
Defendant Exhibit 884	Brawley acl order 2008_0043 apx B
Defendant Exhibit 885	Brawley acl order 2008_0043
Defendant Exhibit 886	Brawley acl order 2008_0064 apx A
Defendant Exhibit 887	Brawley acl order 2008_0064 apx B
Defendant Exhibit 888	Brawley acl order 2008_0064
Defendant Exhibit 889	Brawley acl order 2010-0017
Defendant Exhibit 890	Brawley bd order 2008-0027
Defendant Exhibit 891	Brawley bd order 2008-0069
Defendant Exhibit 892	Brawley bd order 2010-0003
Defendant Exhibit 893	Regional Bd 7_2008_ACLO_City of Brawley
Defendant Exhibit 894	Regional Bd 7_2008_ACLO_City of Brawley
Defendant Exhibit 895	Regional Bd 7_2008_ACLO_City of Brawley(2)
Defendant Exhibit 896	Regional Bd 7_2008_ACLO_City of Brawley

Defendant Exhibit 897	: Regional Bd 7_2010_ACLO_City of Brawley
Defendant Exhibit 898	Regional Bd 7_2010_ACLO_City of Brawley(2) E-mail 1
Defendant Exhibit 899	Regional Bd 7_2010_ACLO_City of Brawley
Defendant Exhibit 900	Regional Bd 7_2010_ACLO_City of Brawley
Defendant Exhibit 901	Regional Bd 7_2013_SASEO_City of Brawley
Defendant Exhibit 902	Regional Bd 7_2014_SASEO_City of Brawley
Defendant Exhibit 903	Regional WQCBoard Cease and Desist Order R7-2008-0008 - City of Brawley
Defendant Exhibit 904	WWTP IID 2006
Defendant Exhibit 905	WWTP IID 2007
Defendant Exhibit 906	WWTP IID 2008
Defendant Exhibit 907	WWTP IID 2009
Defendant Exhibit 908	WWTP IID 2010
Defendant Exhibit 909	WWTP IID 2011
Defendant Exhibit 910	WWTP IID 2012
Defendant Exhibit 911	WWTP IID 2013
Defendant Exhibit 912	WWTP IID 2014
Defendant Exhibit 913	Heron August 2011
Defendant Exhibit 914	NB ltr 10-19-12
Defendant Exhibit 915	Carmona email re question
Defendant Exhibit 916	Ludwig email re WW charges
Defendant Exhibit 917	Att A
Defendant Exhibit 918	Board ltr 7-12-11
Defendant Exhibit 919	Horner email to Wylie
Defendant Exhibit 920	Moore email to Angel
Defendant Exhibit 921	Arellano email to Angel
Defendant Exhibit 922	Moore email to Angel
Defendant Exhibit 923	Board ltr re notice of non-compliance
Defendant Exhibit 924	Board ltr re 2005-0021
Defendant Exhibit 925	Board ltr re 2005-0021 8-31-07
Defendant Exhibit 926	Board ltr re non-compliance 8-3-07
Defendant Exhibit 927	Board ltr re non-compliance 8-3-07
Defendant Exhibit 928	Board ltr re noncompliance 8-3-07
Defendant Exhibit 929	Board ltr re non-compliance 2-21-07
Defendant Exhibit 930	Board ltr re ACLC 2-22-07
Defendant Exhibit 931	Order 2004-0079
Defendant Exhibit 932	Inspection report 00-087
Defendant Exhibit 933	ATT_Brawley_Response to Nolte-EPA
Defendant Exhibit 934	ATT_R7-2007-0048 Brawley CDO
Defendant Exhibit 935	R7-2004-0079-ORDER-4263
Defendant Exhibit 936	Citation_Letter_to_NBC_Apr_2011
Defendant Exhibit 937	Citation_Letter_to_NBC_Jan_2010
Defendant Exhibit 938	Citation_Letter_to_NBC_Jan_2011
Defendant Exhibit 939	Citation_Letter_to_NBC_Jan_2012-a
Defendant Exhibit 940	Citation_Letter_to_NBC_Jan_2012
Defendant Exhibit 941	Citation_Letter_to_NBC_May_2008_NPDES_Compliance
Defendant Exhibit 942	Citation_Letter_to_NBC_May_2009
Defendant Exhibit 943	City_letter_BrawelyBeef_NH3_levels_3-2006
Defendant Exhibit 945	NBC Nitrate Story
Defendant Exhibit 946	National Beef Story

Defendant Exhibit 946	FW: National Beef - Teamsters Story
Defendant Exhibit 947	National Beef Story
Defendant Exhibit 948	RE: REGIONAL WATER BOARD ENFORCER ABUSES AUTHORITY
Defendant Exhibit 949	RE: REGIONAL WATER BOARD ENFORCER ABUSES AUTHORITY
Defendant Exhibit 950	National Beef related story
Defendant Exhibit 951	National Beef is Now Closed
Defendant Exhibit 952	IV Press - Brawley Story
Defendant Exhibit 953	NBC Press
Defendant Exhibit 954	Enforcer Blog
Defendant Exhibit 955	NBC Press
Defendant Exhibit 956	Another IV Employer closing
Defendant Exhibit 957	National Beef press
Defendant Exhibit 958	Desert Sun National Beef Story
Defendant Exhibit 959	National Beef - Teamsters Story
Defendant Exhibit 960	National Beef News
Defendant Exhibit 961	5-19-2006 ltr fro City indicating they can supply NB 1.5 MGD of fresh wate
Defendant Exhibit 962	6-15-12 minor spill at NB and related correspondence
Defendant Exhibit 963	6-22-2012 City ltr re COD testing and meeting
Defendant Exhibit 964	7-23-12 City ltr to NB re increased flows and DO content
Defendant Exhibit 965	9-7-2012 City ltr to NB re project modifications
Defendant Exhibit 966	10-18-2012 meeting agenda
Defendant Exhibit 967	2001-9-27 CA Water Bd. to City re. Permitting
Defendant Exhibit 968	2001-11-7 Ltr. from City to G. Beck re. application for wastewater discharge permit
Defendant Exhibit 969	2011-7-1 ltr. of understanding from NB to City
Defendant Exhibit 970	undated draft ltr. for City letterhead to Fitzgerald re. authorization to discharge to City sewer system
Defendant Exhibit 971	Aerator Delivery
Defendant Exhibit 972	Brawley Utility Tracking
Defendant Exhibit 973	City WWTP Upgrade Versus NB Pretreatment Upgrade To Treat NB
Defendant Exhibit 974	EPA Visit to Brawley - Wastewater
Defendant Exhibit 975	FW Revised Power Point Presentation-Brawley
Defendant Exhibit 976	NATIONAL BEEF CALIFORNIA 2007
Defendant Exhibit 977	Ltr to City 11 16 06
Defendant Exhibit 978	Memo 11 08 06 for No. 15
Defendant Exhibit 979	Wastewater Ammonia Reduction Project
Defendant Exhibit 980	5-8-14 Special Board Order R7-2014-0009
Defendant Exhibit 981	December 2013 City of Brawley Local Limits Submittal to Regional Board
Defendant Exhibit 982	March 26 2014 Notice of Approval of City of Brawley Pretreatment Program Submission with Attached Submission
Defendant Exhibit 983	nbc_aclcpt_ex1
Defendant Exhibit 984	1992.6 EPA Model Pretreatment Ordinance
Defendant Exhibit 985	2008 - 2013 Notices of Violation from City of Brawley to National Beef

Defendant Exhibit 986	2013.12 City of Brawley Local Limits Study by Lee and Ro, Inc.
Defendant Exhibit 987	2014.3.26 Board Notice 7-14-09 Approval of City Pretreatment Prog. Sub
Defendant Exhibit 988	Ammonia 30 mg Ordinance No. 2001-7
Defendant Exhibit 989	Order R7-2013-0068 Settlement Agmt. and Stip. for Entry of Admin. Civ. Liab. Order
Defendant Exhibit 990	R7-2014-0009 Special Bd. Order Amd. Waste Discharge Order R7-2010-0022
Defendant Exhibit 991	R7-2014-0009 Special Bd. Order Amd. Waste Discharge Order R7-2010-0022
Defendant Exhibit 992	R7-2014-0041 Board Admin. Civ. Liab. Complaint Ex. 1
Defendant Exhibit 993	Exhibit 1 - Paskell Expert CV for National Beef_9-17-14
Defendant Exhibit 994	
Defendant Exhibit 995	Exhibit 2 - Waste Water O&M Spending 2006-12 Final
Defendant Exhibit 996	Exhibit 3 - Annual Expenditure Costs 2007-12
Defendant Exhibit 997	National Beef News
Defendant Exhibit 998	RE: National Beef - Teamsters Story
Defendant Exhibit 999	RE: National Beef - Teamsters Story
Defendant Exhibit1000	Rokke email to Vandenberg 2-3-2014
Defendant Exhibit1001	Email re New Desert Sun article on WEI
Defendant Exhibit1002	Email re National Beef News
Defendant Exhibit1003	03-5-7 ltr. from City to Beck re. 3-11-2003
Defendant Exhibit1004	2003-12-2 draft PPT BECC Prelim. Eng. Report
Defendant Exhibit1005	Brawley WW Monthly Billing_ thru Apr 2014
Defendant Exhibit1006	Okun email to Angel 5-19-14