73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
(760) 346-7491

Revised Public Notice 7-14-36
Sept. 4, 2014

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURE
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2014-0041
ISSUED TO NATIONAL BEEF CALIFORNIA, LP, OWNER/OPERATOR,
WASTEWATER TREATMENT PLANT
Brawley – Imperial County

NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD BEFORE THE REGIONAL BOARD ON OCTOBER 27, 2014

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Prosecution Team has alleged that:

National Beef California, LP (hereinafter referred to as either the "Discharger" or "NBC"), owns and operates a slaughterhouse (Facility) located at 57 Shank Road, Brawley, CA 92227. It also owns and operates an on-site Wastewater Treatment Facility (WWTF) that provides wastewater treatment and disposal services for the Facility. Brawley Beef, LLC, formerly known as B.P. Joint Ventures, LLC, built and began operating the Facility in October 2001. The Discharger bought the Facility from Brawley Beef, LLC, on June 2, 2006, and has been operating it ever since then. The Facility processes an average of 2300 cattle per day. NBC's products include boxed beef, ground beef, hides (a closed loop system and no tanning is involved), and other beef and beef by-products.

The on-site NBC WWTF consists of two dissolved air flotation (DAF) units, an anaerobic digester (pond 1), an aerobic activated sludge pond (pond 2), a clarifier, a polishing pond (pond 3), a suspended air flotation (SAF) unit, and a belt press. All three on-site ponds are unlined. There is also an unlined storm water pond on-site that is not considered part of the WWTF. Wastewater from the Facility is discharged to (1) areal groundwater through the unlined ponds and (2) to the city of Brawley municipal sewage collection system. The Discharger estimated the rate of discharge to groundwater at approximately 12,800 gallons per day. Up to 1.625 million gallons per day (mgd) from the WWTF are discharged into the Brawley sewage collection system for further treatment and disposal at its Wastewater Treatment Plant (WWTP). The Colorado River Basin Water Board does not currently regulate the on-site discharge of wastewater at the Facility.

The discharge from the Brawley WWTP is governed by Waste Discharge Requirements Order R7-2010-0022 (National Pollutant Discharge Elimination System Permit No. CA0104523), and Cease and Desist Order R7-2008-0008, as amended by Special Board Orders R7-2008-0069 and R7-2010-0003. The Brawley WWTP is a publicly owned treatment works (POTW), as defined in Title 40 of the Code of Federal Regulations (40 CFR) section 403.3, and discharges its effluent into the New River via Discharge Point 001, which is tributary to the Salton Sea. The New River and the Salton Sea are waters

of the United States. The Brawley WWTP has a design capacity of 5.9 mgd.

Federal pretreatment regulations promulgated by the United States Environmental Protection Agency (USEPA) pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317) require that any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 mgd and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards establish a POTW Pretreatment Program [40 CFR section 403.8(a)]. The Brawley WWTP meets these criteria and thus, was required to establish and implement a formal Pretreatment Program. Cease and Desist Order R7-2007-0008, in substantive part, also requires the city of Brawley to develop and fully implement a Pretreatment Program.

On June 19, 2013, Colorado River Basin Water Board staff and counsel met with NBC corporate officers, its General Counsel, Special Counsel, and local staff to discuss regulatory matters at the Facility. During the meeting, NBC presented a proposal to make upgrades and improvements at the WWTF, including providing a higher and more reliable level of wastewater treatment to comply with the proposed Pretreatment Program from the city of Brawley and to address Board staff concerns about the unlined impoundments and the potential groundwater pollution and nuisance conditions that could result.

Based on a groundwater investigation and wastewater characterization conducted by NBC, NBC was notified by letter dated January 31, 2014, that Pond 1 will be regulated pursuant to Title 27 of the California Code of Regulations (CCR), and that Ponds 2 and 3 will be regulated under Division 7, Chapter 4, Article 4 [commencing with Section 13260] of the California Water Code (CWC). The letter also noted that Ponds 2 and 3 do not require a liner at this time, but recommended compaction of existing clay materials at the next regularly scheduled maintenance following installment of the new Pond 1. Further, the letter explained that all three ponds must be included in the groundwater monitoring program. Finally, the letter requested the Discharger to provide additional technical specifications for the proposed upgrades and improvements to the ponds so that Waste Discharge Requirements could be drafted for all three ponds in one Board Order.

In December 2013, Brawley submitted a final Pretreatment Program for Colorado River Basin Water Board approval (Pretreatment Program Submission). The Colorado River Basin Water Board scheduled consideration of approval of Brawley's proposed Pretreatment Program Submission at its March 20, 2014 regularly scheduled meeting.

On January 31, 2014, the Discharger notified the Colorado River Basin Water Board staff that it intends to close the Facility on April 4, 2014, when it would cease all slaughterhouse operations and cease the discharge of wastes at and from the Facility. Written official notification to the Colorado River Basin Water Board was submitted in a letter dated February 4, 2014. The Discharger also informed Colorado River Basin Water Board staff that it intends to retain its plant as a viable asset (i.e., keep a level of maintenance on the slaughterhouse building) in case there are opportunities to sell it for a similar or alternate business.

On February 18, 2014, pursuant to California Water Code section 13304, the Colorado River Basin Water Board Assistant Executive Officer issued to the Discharger tentative Cleanup and Abatement Order (CAO) R7-2014-0033, which was noticed for public comment. The CAO was issued in light of the Discharger's announced closure to provide

the appropriate regulatory enforcement tools to ensure water quality would be protected. The tentative CAO provided two alternative sets of directives. One set assumed NBC would stay in business and continue to operate. The other set assumed NBC would close by the date announced.

The Discharger recently notified the Colorado River Basin Water Board by letter dated March 14, 2014, that it now plans to cease slaughterhouse operations on May 23, 2014, to provide local cattlemen with an opportunity to deal with their current inventory of cattle.

In light of this new information, the tentative Cleanup and Abatement Order presented to the Board was amended with respect to the two alternative directives. As noted above, the first set of directives, which would apply if the Discharger's Facility remained in operation for the foreseeable future, remained unchanged. The second set of directives, which would apply if the Discharger closed the Facility, was amended to reflect the new closure date of May 23, 2014. The time schedules were also modified accordingly when specified closure tasks and CEQA documentation were to be completed.

At the March 20, 2014, public meeting, the Colorado River Basin Water Board adopted Cleanup and Abatement Order R7-2014-0033, as amended. In a separate action at the meeting, the Board also approved the city of Brawley's proposed pretreatment program pursuant to Resolution R7-2014-0020.

The Assistant Executive Officer of the Colorado River Basin Water Board has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 to the Discharger, alleging that it has violated the federal National Pretreatment Standards general prohibition set forth in 40 CFR section 403.5(a)(1), which prohibits an Industrial User from introducing into a POTW any pollutants which cause Pass Through or Interference with the POTW. The Complaint proposes that administrative civil liability in the amount of ($3,750,000.00) be imposed pursuant to CWC section 13385, subdivisions (a)(5) and (c), and all applicable law. A hearing is currently scheduled to be held before the Colorado River Basin Water Board on October 27, 2014.

Unless the Discharger waives the right to a hearing and pays the proposed liability, the hearing will be held before the Colorado River Basin Water Board on October 27, 2014. The deadline of procedural deadlines are listed in the Table of Important Deadlines (Table) at the end of this Notice.

Also, please note that all requests, objections, and any other material submissions for which a deadline has been specified **must be received no later than 5:00 p.m. on the date specified. Unless the recipient(s) indicate otherwise, all written requests and submissions may be provided electronically.**

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Colorado River Basin Water Board will consider whether to adopt the proposed assessment, modify it, or reject it. If it adopts the proposed assessment, the Board will issue an Administrative Civil Liability Order. The public hearing on October 27, 2014 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Board meeting agenda. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Board's web page at http://www.waterboards.ca.gov/coloradoriver.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been approved by the Colorado River Basin Water Board's Advisory Team, but the Advisory Team may modify the procedure on its own or at the request of any designated party. A copy of the procedures governing an adjudicatory hearing before the Board may be found at Title 23 of the California Code of Regulations (CCR), section 648 et seq., and is available at: http://www.waterboards.ca.gov, or upon request. In accordance with section 648, subdivision (d), any procedure not provided by this hearing procedure is deemed waived. Except as provided in section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedure Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

THE PROCEDURE AND DEADLINES DESCRIBED IN THIS NOTICE MAY BE AMENDED BY THE ADVISORY TEAM AS NECESSARY. **ANY OBJECTIONS TO THIS HEARING PROCEDURE MUST BE RECEIVED BY THE BOARD'S ADVISORY TEAM BY 5:00 P.M. ON THE DATE SPECIFIED ON THE TABLE, OR THEY WILL BE WAIVED**. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Colorado River Basin Water Board, staff, or others at the discretion of the Board.

The following participants are hereby designated as parties in this proceeding:

(1) Colorado River Basin Water Board Prosecution Team
(2) National Beef California, Owner/Operator of the WWTF

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing to Advisory Team counsel, Lori Okun, Assistant Chief Counsel, Office of Chief Counsel, State Water Resources Control Board, and to Robert Perdue, Executive Officer, with copies to the designated parties, **no later than 5 p.m. on the date specified in the Table.** The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Colorado River Basin Water Board could affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted to Ms. Okun and Mr. Perdue **no later than 5:00 p.m. on the date specified in the Table.** The parties will be notified in writing by the Advisory Team by **5:00 p.m. on the date specified in the Table** whether the request has been granted or denied.

Contacts

Advisory Team:

Robert Perdue, Executive Officer
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Robert.Perdue@waterboards.ca.gov

Lori T. Okun, Assistant Chief Counsel
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814
Lori.Okun@waterboards.ca.gov

Jon Rokke, Water Resources Control Engineer
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Jon.Rokke@waterboards.ca.gov

Prosecution Team:

Jose Angel, Assistant Executive Officer
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Jose.Angel@waterboards.ca.gov

Anna Kathryn Benedict, Attorney III
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95816
AnnaKathryn.Benedict@waterboards.ca.gov

Tom Vandenberg, Attorney
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814
Tom.Vandenberg@waterboards.ca.gov

Doug Wylie, Senior Water Resources Control Engineer
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Doug.Wylie@waterboards.ca.gov

Discharger:

Parthenia Evans
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150
Parthy.Evans@stinsonleonard.com

Perry L. Glantz
Stinson Leonard Street LLP
5613 DTC Parkway, Suite 970 Greenwood Village, CO 80111
Telephone: (303) 376-8410
Facsimile: (303) 578-7967
Perry.glantz@stinsonleonard.com

J.G. Andre Monette
Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92101
Telephone: (619) 525-1300
Facsimile: (619) 233-6118
Andre.monette@bbklaw.com

Preliminary Witness List

The Prosecution Team's preliminary witness list of those witnesses expecting to testify at the public hearing includes Mr. Jose Angel, Assistant Executive Officer, and Mr. Doug Wylie, Senior Water Resources Control Engineer. The Prosecution Team will update the preliminary witness list, if necessary, and provide the additional required information by **5:00 p.m. on the date specified in the Table.**

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Colorado River Basin Water Board (Prosecution Team) have been separated from those who will provide advice to the Board (Advisory Team). Members of the Advisory Team are: Robert Perdue, Executive Officer; Lori T. Okun, Assistant Chief Counsel; and Jon Rokke, Water Resources Control Engineer. Members of the Prosecution Team are: Jose Angel, Assistant Executive Officer; Anna Kathryn Benedict, Attorney III; Tom Vandenberg, Attorney; and Doug Wylie, Senior Water Resources Control Engineer. Although Mr. Vandenberg has acted as a legal advisor to the Board in other, unrelated matters, he is not advising the Board in this proceeding. Accordingly, the members of the Prosecution Team have not engaged in any *ex parte* communications, as defined below, with members of the Board or the Advisory Team.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Team or members of the Colorado River Basin Water Board. An *ex parte* contact is any written or verbal communication

pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: the Prosecution Team shall have 1.5 hours and the Discharger shall have 2.5 hours to testify, present evidence, and cross-examine witnesses, and make any opening or closing statements. Each interested person shall have three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Colorado River Basin Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

Prosecution Team: Send to Advisory Team attorney, the Discharger, and any other designated parties by 5:00 p.m. **on the date specified in the Table.**

Discharger and any other designated parties: Send to Advisory Team attorney, the Prosecution Team, and any other designated parties by **5:00 p.m. on the date specified in the Table**.

1. All evidence, testimony (except rebuttal testimony) and exhibits proposed to be offered at the hearing. Evidence and exhibits already in the public files of the Colorado River Basin Water Board may be submitted by reference so long as the exhibits and their location are clearly identified in accordance with 23 CCR section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

In lieu of electronically transmitting copies of the above information, the Prosecution Team may create an "ftp" website or similar electronic data website containing this information so long as it is accessible to the Advisory Team, the Discharger, and any other designated party. If such a website is used, the Prosecution Team shall confirm as soon as possible with the Advisory Team, the Discharger, and any other designated party that the website is accessible. If the website is not accessible to any party, the Prosecution Team shall provide the information contained on the website to that party in electronic form, unless otherwise directed by that party.

If the Prosecution Team would like to submit information that rebuts the information previously submitted by other designated parties, it may provide that rebuttal information to Lori T. Okun and Robert Perdue, the Discharger, and all other designated parties **no later than 5:00 p.m. on the date specified in the Table** in electronic form, unless otherwise directed by the recipient(s). Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the Hearing.

In accordance with Title 23, CCR, Section 684.4, the Colorado River Basin Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Board and will not be included in the administrative record for this proceeding. Accordingly, oral testimony offered at the hearing that is beyond the scope of the previously submitted written testimony may be excluded. Power Point and other computer assisted visual presentations must be submitted to the Advisory Team by **5:00 p.m. on the date specified in the Table.** Electronic submissions are acceptable, unless otherwise directed by any intended recipient(s). Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in Government Code Section 11511.5(b), including, but not limited to, the following matters:

(1) Exploration of settlement possibilities;
(2) Preparation of stipulations;
(3) Clarification of issues;
(4) Rulings on identity and limitation of the number of witnesses;
(5) Objections to proffers of evidence;
(6) Order of presentation of evidence and cross-examination;
(7) Rulings regarding issuance of subpoenas and protective orders;
(8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing; and,
(9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.

Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted as early as practicable to the Advisory Team with a copy to all other designated parties. The requests may be electronically submitted, unless otherwise directed by any recipient(s). No party who participates in a pre-hearing conference is precluded from appearing before the Colorado River Basin Water Board at any subsequent hearing relating to the matter.

Evidentiary Objections

Any designated party objecting to evidence, testimony, or exhibits submitted by another designated party must submit a written objection (electronic submission is acceptable, unless otherwise directed by any recipient) to the Advisory Team with a copy to all other designated parties by **5:00 p.m. on the date specified in the Table**. The Advisory Team will notify the parties in writing as soon as possible about further action to be taken on such objections and when that action will be taken. At the discretion of the Advisory Team, a pre-hearing telephonic conference may be scheduled to discuss any further actions to be taken on the objections.

Evidentiary Documents and File

The ACL Complaint, related evidentiary documents, and comments received are on file and may be inspected or copied at the office of the Colorado River Basin Regional Water Quality Control Board, 73-720 Fred Waring Drive, Suite 100, Palm Desert, CA. The ACL Complaint is hereby incorporated by reference into the administrative record for this matter. "Related evidentiary documents" and comments received shall be considered part of the official administrative record for this hearing to the extent a designated party or interested person (as applicable) submits the document(s) or comments or incorporates them by reference, in accordance with the "**Submission of Evidence and Policy Statements**" procedure described above. All timely submittals received for this proceeding will be added to this file and will become a part of the administrative record, absent a contrary ruling by the Board Chair. In addition, many of these documents may also be posted on-line at <www.waterboards.ca.gov/coloradoriver>. Although the web page is updated regularly, please contact Jose Angel at jose.angel@waterboards.ca.gov or (760) 776-8932 to assure access to the latest information.

Questions

Questions concerning this proceeding may be addressed to Lori T. Okun by e-mail at Lori.Okun@waterboards.ca.gov or by phone at (916) 341-5165.

TABLE OF IMPORTANT DEADLINES

April 11, 2014	Prosecution Team issued ACL Complaint to Discharger and Advisory Staff, electronically posted the Notice of Public Hearing and Hearing Procedure, and sent the Discharger a copy of the proposed Notice.
May 20, 2014	Revised Hearing Notice issued.
May 23, 2014	Deadline for objections, if any, to Revised Hearing Notice. Objections must be limited to any revisions from the previously proposed notice.
May 30, 2014	Deadline for requests for designated party status.
June 9, 2014	Deadline for opposition to requests for designated party status.
June 19, 2014	Advisory Team issues decision on any requests for designated party status.
June 19, 2014	Prosecution Team's deadline for submitting all information required under "Submission of Evidence and Policy Statements."
September 18, 2014	Discharger's deadline for submitting all information required under "Submission of Evidence and Policy Statements," and any objection to Jon Rokke's continued participation as a member of the Advisory Team and evidence in support of that objection
October 6, 2014	Prosecution Team's deadline for submitting any rebuttal information, argument or evidentiary objections to Discharger and other Designated Party submittals. <u>If additional parties are designated, this is also the Discharger's deadline for submitting any rebuttal information, argument or evidentiary objections to their submittals</u>.
October 13, 2014	Non-party written comments due.
October 13, 2014	Deadline to renew requests for additional presentation time. Include an explanation of why additional time is needed.
October 22, 2014	Deadline for submitting any evidentiary objections to rebuttal testimony or evidence.
October 22, 2014	Designated Parties' deadline for submitting Powerpoint and other computer-assisted visual presentations for use at the hearing.
October 27, 2014	Hearing Date.