California Regional Water Quality Control Board, Colorado River Basin
Prosecution Team Evidence
on the matter of
Administrative Civil Liability Complaint R7-2014-0041
Exhibit 44

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Colorado River Basin Regional Water Quality Control Board

CERTIFIED MAIL No.: 7013 0600 0000 1712 0941

March 24, 2014

Brian Webb, General Manager
National Beef California
P.O. Box 1211
57 East Shank Road
Brawley, CA 92227

Dear Mr. Webb:

SUBJECT: CLEANUP AND ABATEMENT ORDER R7-2014-0033 FOR NATIONAL BEEF CALIFORNIA (NBC), LLP, WASTEWATER TREATMENT FACILITY, BRAWLEY, IMPERIAL COUNTY

Attached for your immediate attention and action is Cleanup and Abatement Order R7-2014-0033 as adopted by the Colorado River Basin Water Board last week in Brawley. Please note that the first deliverables required by the Order are **due to us by June 5, 2014**.

If you have any questions regarding this matter or would like to set up a meeting to discuss it, please contact me at 760-776-8932.

Sincerely,

Jose L. Angel, AEO

JOSE L. ANGEL, P.E.
ASSISTANT EXECUTIVE OFFICER

JA/sw

Attachment

cc w/attachment:

Tom Vandenberg, Office of the Chief Counsel, SWRCB, Sacramento
Anna Kathryn Benedict, Office of Enforcement, SWRCB, Sacramento
Roger Vintze, DTSC CUPA, El Centro
Paul Martin, GO-Biz, Sacramento
Andy Horne, Imperial County, El Centro
Connie Valenzuela, Imperial County, El Centro
Brad Poiriez, Imperial County, El Centro
Rosanna Bayon Moore, City of Brawley, Brawley
David Kalscheur, National Beef California, Dodge City

File: WDID 7A 13 5006 001 National Beef Company WWTP Working File

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

BOARD ORDER R7-2014-0033

CLEANUP AND ABATEMENT ORDER
FOR
NATIONAL BEEF CALIFORNIA, LP, OWNER/OPERATOR
WASTEWATER TREATMENT FACILITY
Brawley– Imperial County

This Cleanup and Abatement Order (CAO, or Order) is issued pursuant to Sections 13304 and 13267 of the California Water Code (CWC), which authorizes the California Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board) to issue Cleanup and Abatement Orders and require the submittal of technical reports. The Colorado River Basin Water Board finds that:

1. 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. Attachment A, incorporated herein and made part of this Board Order by reference, shows the location of the Facility.

2. 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.

3. The on-site 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.

4. The two DAF units remove fats, oils and grease (FOG) and settleable solids from the Facility's wastewater generated. The wastewater then flows to the anaerobic digester for removal of organic material. The anaerobic digester is a covered unit that generates biogas that is used to power boilers at the Facility. Wastewater then flows to the aerobic pond where activated sludge further removes organic material. The aerobic pond is equipped with return activated sludge (RAS) and waste activated sludge (WAS) systems. From the aerobic pond wastewater flows to the clarifier where RAS is re-circulated and WAS is removed. Wastewater then flows to the polishing pond where it is piped to the SAF unit. The SAF is used for final clarification by removing skimmed solids. Skimmed solids are pumped to the filter press for final thickening. Filter press permeate is returned to the SAF unit. Pretreated water from the SAF unit is discharged to the city of Brawley's (Brawley's) municipal wastewater collection system.

5. Wastewater from the Facility is discharged to (1) areal groundwater through the unlined ponds and (2) to the 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).

6. 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 WWTP has a design capacity of 5.9 mgd.

7. 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 403.8(a)]. The Brawley WWTP meets these criteria and thus, was required to establish and implement a formal Pretreatment Program to properly handle, treat and dispose of pollutants from Industrial Users (IUs) which Pass Through or Interfere with the operation of the POTW. The Pretreatment Program is also needed to protect the integrity of the POTW and safety of POTW personnel and other personnel who work on the sewage collection system [40 CFR 403.5, *National Pretreatment Standards: Prohibited discharges*]. Cease and Desist Order R7-2007-0008, in substantive part, also requires Brawley to develop and fully implement a Pretreatment Program.

8. 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 has scheduled consideration of approval of Brawley's proposed Pretreatment Program Submission at its March 20, 2013 regularly scheduled meeting.

9. The Colorado River Basin Water Board does not currently regulate the on-site discharge of wastewater at the Facility.

Regulatory Background

10. 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.

11. The wastewater discharged from the Facility into the unlined ponds is characterized by relatively high concentrations of Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Bacteria (as measured by the number of total coliform organisms per 100 milliliter sample), and Ammonia. Other pollutants found in the discharge to the unlined ponds include Oil and Grease, Total Petroleum Hydrocarbons, and Nitrate. The wastewater discharged from the Facility into Brawley's WWTP is also characterized by relatively high concentrations of Ammonia. Colorado River Basin Water Board monitoring records indicate that NBC has also discharged wastewater with extremely high concentrations of BOD and TSS.

12. From 1999 to approximately February 2012, when Brawley's extensive upgrade of the WWTF's treatment works became operational, Brawley owned and operated various configurations of a WWTP whose main treatment system has been wastewater treatment ponds. Brawley has violated every permit the Colorado River Basin Water Board has adopted for its WWTP since 1999, and also violated various Colorado River Basin Water Board enforcement Orders, including Cease and Desist Order R7-2007-0008. Up until 2013, Brawley's WWTP has been plagued by chronic noncompliance problems since 1999 because: (a) its pre-2012 treatment ponds were inherently inadequate to effectively deal with the significant wastewater load from the Facility and (b) Brawley had not established and implemented adequate institutional controls (i.e., a Pretreatment Program) to ensure proper management of industrial discharges into its WWTP, including the industrial discharge from the Facility.

13. Because Brawley was in chronic violation of its NPDES Permit and Cease and Desist Order, on February 28, 2013, the Colorado River Basin Water Board issued Administrative Civil Liability Complaint R7-2013-0028, seeking administrative civil liability be assessed against Brawley in the amount of $1,734,778 for alleged violations of effluent limitations prescribed in its previous and current NPDES permits, Orders R7-2005-0021 and R7-2010-0022, and alleged violations of the Pretreatment Program Submission milestones set forth in Cease and Desist Order R7-2008-0008. Pursuant to settlement negotiations, a stipulated settlement agreement was entered into to resolve by consent all of the alleged violations, and a proposed Administrative Civil Liability Order incorporating the stipulated settlement agreement, Board Order R7-2013-0068, was presented to the Colorado River Basin Water Board for its consideration of adoption at a public hearing held on September 19, 2013. The proposed Order called for assessing Brawley one million dollars, which was comprised of $378,000 in Mandatory Minimum Penalties for the alleged effluent limitation violations, and $622,000 in discretionary administrative civil liability for the alleged Cease and Desist Order violations pertaining to the Pretreatment Program Submission milestones. The Colorado River Basin Water Board adopted the Administrative Civil Liability Order at the public hearing.

14. Federal regulations also establish General Pretreatment Regulations to prevent "Pass Through and Interference" that are applicable to Industrial Users, regardless of whether the Control Authority (e.g., City of Brawley) has an approved Pretreatment Program [40 CFR Part 403]. An investigation regarding compliance with all of the General Pretreatment Regulations is ongoing, but is beyond the scope of this Order.

15. As previously stated in Finding 8, above, Brawley has developed and submitted to the Colorado River Basin Water Board a proposed Pretreatment Program that Board staff has reviewed and is recommending be approved. However, because the Cease and Desist Order remains in effect, Brawley continues to be in violation of the Cease and Desist Order's June 15, 2009 milestone to be in full compliance with an approved Pretreatment Program because it has yet to fully implement such an approved Pretreatment Program. Therefore, Brawley continues to accrue administrative civil liability that could be assessed by the Colorado River Basin Water Board. Nevertheless, Board staff is recommending the Board approve Brawley's proposed Pretreatment Program at the next Board public meeting on March 20, 2014, so that Brawley can begin to implement the Pretreatment Program fully after the Board approves modification of Brawley's NPDES Permit, R7-2010-0022, at the May 8, 2014 Board public meeting that will incorporate the approved Pretreatment Program as enforceable conditions of the permit. At this time, Board staff is also recommending that the Board not pursue any additional enforcement against Brawley

for missing this key Pretreatment Program implementation milestone, provided that Brawley begins to fully implement its Pretreatment Program after it is approved and incorporated into its NPDES Permit. Up until now, the city of Brawley has been attempting to regulate the discharges from NBC into the Brawley municipal sewage collection system through a contract entered into with NBC. Given the chronic non-compliance issues evidenced by Brawley's history of NPDES permit violations, however, that contractual arrangement may not have provided legally sufficient authority to the city of Brawley under the federal pretreatment regulations to control the contribution by NBC to Brawley's WWTP to ensure compliance with applicable Pretreatment Standards and Requirements [40 CFR 403.8(f)(1)(iii)].

16. On May 11, 2011, the Colorado River Basin Water Board staff requested NBC to file a Report of Waste Discharge (ROWD) and apply for Waste Discharge Requirements for the discharge to and from the unlined ponds to areal groundwater. On June 30, 2011, Board staff received the ROWD from NBC, which was dated June 23, 2011. Because the ROWD was incomplete, however, on January 26, 2012, Board staff requested NBC to provide additional information to complete the ROWD, which was received on May 29, 2012. On November 27, 2012, Board staff requested additional information, which was provided on December 19, 2012, to complete the ROWD.

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

18. On June 27, 2013, pursuant to Section 13267 of the California Water Code, the Colorado River Basin Water Board issued a Technical Order against NBC. The Order required NBC to conduct a groundwater investigation to determine whether the discharge to the unlined ponds adversely impacted groundwater and, if so, the extent of that impact. The Order also required NBC to properly characterize its wastewater for regulatory purposes.

19. In response to the Technical Order, the Discharger installed eleven on-site groundwater monitoring wells. It submitted the results of its groundwater investigation and wastewater characterization in a report titled "Groundwater Study Wastewater Pre-treatment System," dated September 27, 2013, and prepared by its consultant, HR Green. Colorado River Basin Water Board staff has reviewed the report and found that the wastewater discharged to the unlined ponds not only has the potential to adversely impact groundwater, but it also has caused concentrations of BOD and Nitrate to increase in areal groundwater when compared to background concentrations, albeit the increase appears to be confined to the immediate vicinity of the ponds.

20. Based on the groundwater investigation and wastewater characterization, the Colorado River Basin Water Board notified NBC in a letter, dated January 31, 2014, that Pond 1 will be regulated pursuant to Title 27 of the California Code of Regulations (CCR), and that Ponds 2 and 3 will be regulated under Division 7, Chapter 4, Article 4 [commencing with Section 13260] of the California Water Code (CWC). The letter also noted that Ponds 2 and 3 do not require a liner at this time, but recommended compaction of existing clay materials at the next regularly scheduled maintenance following installment of the new

Pond 1. Further, the letter explained that all three ponds must be included in the groundwater monitoring program. Finally, the letter requested the Discharger to provide additional technical specifications for the proposed upgrades and improvements to the ponds so that Waste Discharge Requirements could be drafted for all three ponds in one Board Order.

21. 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.

22. The Facility currently employs approximately 1,300 people and reportedly generates $1 billion in revenues. On February 10, 2014, Colorado River Basin Water Board staff was informed that Imperial County has formed an ad hoc committee comprised of Imperial Irrigation District staff, County staff, local cattlemen representatives, elected officials, and other agencies and stakeholders. The purpose of the committee is to put together a package of financial incentives in an effort to persuade NBC to stay in business and not shut down so that it could save jobs that otherwise would be lost if the Facility closes.

23. The Colorado River Basin Water Board has received comments concerning the announced closure of NBC, including a letter dated February 12, 2014, from Senator Ben Hueso of the 40th Senate District. The Board has reviewed these comments and to the extent they are relevant and consistent with the Board's statutorily mandated duties to protect water quality, and State Water Resources Control Board and Colorado River Basin Water Board policies, the Board has taken them into consideration.

24. The Colorado River Basin Water Board recognizes that the Discharger will need time to implement the proposed pretreatment capital improvements if it decides to remain in operation (Scenario 1). The city of Brawley is the Lead Agency for the purposes of complying with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) for the proposed WWTF improvements and upgrades project, but it has not yet certified an environmental document for that project. Prior to the Discharger's January 31, 2014 announced closure of the Facility, the Discharger proposed a time schedule for making the upgrades and other capital improvements at the Facility that would start right after the city of Brawley complied with CEQA (originally scheduled for March 2014, but some of the substantive work necessary for upgrading the ponds would begin in September 2014 and be completed in December 2014). Any delays in completing that CEQA review would, of course, extend the time period before implementation of the upgrades could proceed. Similarly, if the Discharger chose to close its Facility on schedule by April 4, 2014, as publicly announced (Scenario 2), the Colorado River Basin Water Board would have to assume Lead Agency responsibilities with respect to the required proper cleanup and closure of the three ponds and other operational elements of the WWTF. The Discharger would also need time to properly close and decommission its WWTF.

25. In spite of the Ad Hoc committee's package with financial incentives and other commitments, the Discharger reaffirmed its intent to close the plant by April 4, 2014. However, 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.

26. Based on the foregoing, providing the Discharger with a time schedule is necessary under either of the scenarios described in Finding 24, above, and thus, it is in the best interest of the people of the state of California in this case to prescribe a time schedule.

27. Since June 2013, NBC has made short-term operational and maintenance changes at its WWTF to improve the quality of the wastewater discharged into Brawley's municipal sewage collection system. Data provided by Brawley and the Discharger indicate that the enacted changes, coupled with the increased treatment capacity of Brawley's upgraded and expanded WWTP, which became operational during the summer of 2012, have enabled the Discharger to comply with the discharge provisions contained in the pretreatment contractual arrangement that was in effect at that time between the city of Brawley and NBC, which allowed NBC to discharge its wastewater into the collection system. However, the additional WWTF upgrades proposed by the Discharger are necessary to ensure consistent compliance with Brawley's Pretreatment Program. The proposed lining of the first pond is also necessary to ensure compliance with Title 27, CCRs, a regulatory requirement that would take effect if NBC does not shut down (Scenario 1).

28. Based on publicly available information, NBC is a subsidiary of National Beef, which is headquartered in Kansas City, Missouri, and is one of the largest beef processing companies in the U.S., accounting for approximately 14.5% of all of the steer and heifer slaughter regulated by the US Department of Agriculture. In December 2011, Leucadia National Company (LNC) acquired 78.9% of National Beef. LNC has diversified holdings in its consolidated subsidiaries, which, besides National Beef, also include manufacturing, gaming entertainment, medical products development, and wine operations. For 2012 LNC reported its company shareholder's equity as $6,767,268,000 and its total consolidated revenue and incomes as $9,193,689,000.

General Hydrologic Conditions

29. Annual precipitation for Brawley averages about 3 inches.

30. The Oakley Canal borders the property on the east.

31. There are no domestic or municipal wells within 500 feet of the WWTF.

32. Soil units represented in the location of the Facility are the Imperial-Glenbar–silty clay and Imperial–silty clay to sandy silt. The shallow hydrogeologic profile includes surficial confining silty clay over sandy clayey silt, with an upper confined/semi-confined aquifer. The surficial confining unit consists of very stiff clay extending from 0 to 20 feet. Below that, at 20-25 feet below ground surface (bgs), is a medium-dense sandy clayey silt. The local upper aquifer is approximately 9-21 feet bgs.

33. Colorado River Basin groundwater flow in the area is to the northwest toward the Salton

Sea.

Basin Plan, Beneficial Uses, and Regulatory Considerations

34. The Basin Plan designates beneficial uses and establishes water quality objectives for ground and surface waters in the Region, and contains implementation programs and policies to achieve objectives. In addition, State Water Resources Control Board (State Water Board) Resolution 88-63 requires that, with certain exceptions, the Colorado River Basin Water Board assign the municipal and domestic supply use to water bodies that do not have beneficial uses listed in the Basin Plan.

35. The on-going discharge from the Facility to the unlined ponds is within the Imperial Hydrologic Unit, whose beneficial uses are designated as:

    a. Municipal supply (MUN)
    b. Industrial supply (IND)

36. First-encountered groundwater beneath the site is not currently used for municipal purposes because of its relatively high salts concentrations.

37. Surface waters in the area of the site consist of the Imperial Irrigation District (IID) irrigation canals, surface drains, and tile drains (Imperial Valley Drains). Agricultural subsurface drainage water, which enters tile drains and open drains near the site, serves as a source of freshwater replenishment to the Salton Sea.

38. The beneficial uses of waters in the Imperial Valley Drains are:
    a. Fresh Water replenishment of Salton Sea (FRSH)
    b. Non-contact Water Recreation (REC II)
    c. Warm Water Habitat (WARM)
    d. Wildlife Habitat (WILD)
    e. Preservation of Endangered or Threatened Species (END)

39. State Water Resources Control Board (State Water Board) Resolution 68-16 ("Policy with Respect to Maintaining High Quality Waters of the State") (hereinafter Resolution 68-16) requires a Colorado River Basin Water Board in regulating the discharge of waste to maintain high quality waters of the state (i.e., background water quality) until it is demonstrated that any change in quality will be consistent with maximum benefit to the people of the State, will not unreasonably affect beneficial uses, and will not result in water quality less than as described in plans and policies (e.g., violation of any water quality objective). Moreover, the discharge is required to meet WDRs that result in the best practicable treatment or control (BPTC) of the discharge necessary to assure pollution or nuisance will not occur, and highest water quality consistent with maximum benefit to the people will be maintained.

40. Section 13304(a) of the CWC states in relevant part:

    "Any person...who has caused or permitted, causes or permits, or threatens to cause or permit, any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Board clean up such waste or abate the effects thereof, or in the case of threatened pollution or nuisance, take other necessary or remedial action...."

41. Groundwater data submitted by the Discharger pursuant to CWC Section 13267 indicate that the wastewater discharged to the unlined ponds threatens to create a condition of pollution. In addition, the characteristics of the wastewater discharged to the on-site ponds and the actual type of wastewater treatment facilities cause the on-site discharge of wastewater to have significant nuisance potential if not properly managed. Also, if the Facility ceases operations, solids and other anaerobic wastes already accumulated in the ponds and the other facilities have the potential to create nuisance odors if not managed and disposed of properly. Further, because the wastewater discharged to the first unlined pond (Pond 1) is considered a "designated waste" pursuant to CWC Section 13173, the closure of Pond 1 is potentially subject to the requirements in Title 27, CCRs. However, Section 20090(d) of Title 27 exempts cleanup actions taken by or at the direction of a regional water quality control board provided that wastes, pollutants, or contaminated materials removed are discharged in accordance with the applicable waste classification and management requirements set forth in Title 27, commencing with section 20200. In this matter, the applicable waste classification and management requirements are those pertaining to designated wastes, Title 27, section 20210. The Title 27 cleanup action exemption further requires that remedial actions intended to contain such wastes at the place of release shall implement applicable provisions of Title 27 to the extent feasible. Therefore, the Discharger will be subject to the closure requirements of Title 27, commencing with Section 20950, for Pond 1. Furthermore, if Pond 1 is not "clean closed," then the Discharger will also be subject to the post-closure requirements of Title 27 for that pond. If the Facility remains in operation, Pond 1 must comply with the construction standards, water quality monitoring, closure and post-closure maintenance standards, and financial assurance requirements for a Class II surface impoundment pursuant to Title 27, CCRs.

42. Taking into consideration the comments received regarding NBC's proposed closure and the associated economic ramifications, but also carrying out its legislatively mandated fiduciary responsibilities to protect water quality for the benefit of all people of the state of California, the Colorado River Basin Water Board is proposing in this tentative Order to provide the Discharger with two directive alternatives to address water quality and nuisance concerns: (1) one set of directives is applicable if the Discharger's Facility remains in operation for the foreseeable future; and (2) the other set of directives is applicable if the Discharger closes the Facility. Both sets of directives include time schedules for implementation. If the Facility remains in operation, the first task would be due on September 20, 2014 (i.e., six months after the date proposed for adoption of this Order), to provide stakeholders time to continue discussions and negotiations with NBC. If the Facility closes by May 23, 2014, the most recent date announced by NBC, the first task would be due on June 5, 2014.

43. In accordance with Section 13304(c)(1) of the CWC, "[i]f the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a) [of Section 13304] are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action."

44. Section 13267(b) of the CWC provides that:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring such reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

45. The technical reports required by this Order are necessary to assure compliance with this Order. Existing data and information about the Facility indicate that waste has been discharged or is discharging at the Facility, which is owned and operated by the Discharger.

46. Section 15045 of the CEQA Guidelines (Title 14, CCRs, § 15000 et seq.) provides authority for the Lead Agency to recover costs in preparing the environmental documents and procedures necessary to comply with CEQA for a project. In addition, CEQA Guidelines section 15063(e) provides that if the project is to be carried out by a private person or private organization, the Lead Agency may require such person or organization to submit data and information which will enable the Lead Agency to prepare the Initial Study.

47. Any person affected by this action of the Colorado River Basin Water Board may petition the State Water Resources Control Board to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050 et seq. The State Water Board must receive the petition by 5:00 p.m. within 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

    <http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml>

    or a hard copy will be provided upon request.

48. This enforcement action, which is being taken for the protection of the environment, is categorically exempt from CEQA pursuant to Section 15308, Title 14, CCRs. This enforcement action is also categorically exempt from CEQA pursuant to Section 15321(a)(2), Title 14, CCRs, since the issuance of this Order is an enforcement action taken by a regulatory agency.

49. The Colorado River Basin Water Board has notified the Discharger and all known interested agencies and persons of its intent to adopt this Order for the , and has provided them with an opportunity for a public meeting and an opportunity to submit comments.

50. The Colorado River Basin Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED, that pursuant to Sections 13260, 13267, and 13304 of the CWC, the Discharger shall prepare technical reports and shall clean-up or abate the constituents and threatened nuisance conditions described in this Order by complying with the following:

A. Alternative 1: Facility Remains in Operation

1. Should the Discharger decide to keep its Facility in operation, the Discharger shall submit **by September 20, 2014**:

   a. A technical report providing information pursuant to Title 27, CCRs, sections 21710 through 21760, for a Class II surface impoundment and a time schedule for implementation to bring Pond 1 into full compliance with all of the applicable requirements of Title 27, CCRs, Section 20005, et seq. The proposed water quality monitoring program shall also include provisions for monitoring Ponds 2 and 3 for purposes of detecting, characterizing, and responding to releases; and

   b. A technical report with proposed design plans, specifications, and a time schedule for implementation for the proposed upgrades and improvements at the other on-site wastewater facilities to ensure consistent compliance with all applicable "Pass Through and Interference" pretreatment provisions, eliminate the threat to areal groundwater quality posed by the incidental waste discharged from the other two unlined ponds, and prevent nuisance conditions associated with the on-site wastewater treatment and disposal facilities.

B. Alternative 2: Facility Ceases Operations and All On-site Discharges of Wastes

1. Should the Discharger decide to cease Facility operations, the Discharger shall **by June 5, 2014**:

   a. Procure the services of a professional experienced in the preparation of CEQA documents (e.g., Initial Studies, Negative Declarations, and Environmental Impact Reports) and procedures to assist the Colorado River Basin Water Board in completing its obligations under CEQA for the closure of the wastewater facilities. The Discharger shall provide the contact information of the professional (individual or project manager if from a company) by **June 12, 2014**, to the Colorado River Basin Water Board.

   b. Submit a technical report with a time schedule addressing compliance with the closure requirements contained in Title 27, CCRs, commencing with Section 20950 for Pond 1 to the extent feasible, and addressing compliance with the Porter-Cologne Water Quality Control Act (commencing with Water Code section 13000) and applicable implementing regulations for the closure of Ponds 2 and 3 to protect water quality and to prevent conditions of pollution and nuisance; and

c. Submit a technical report with a time schedule and proposed plans and specifications to also close the on-site storm water pond so as to eliminate any storm water discharges from it, and remove and properly dispose of all wastes (.e.g., solids and wastewater) from all of the other on-site wastewater treatment facilities and unit processes (e.g., DAF unit and the hide curing facility), and prevent wastewater treatment units from capturing and accumulating precipitation in a manner that it would threaten or create nuisance conditions.

C. Regional Board Approval of Proposed Work and Time Schedules: The Discharger must receive written approval from the Colorado River Basin Water Board's Executive Officer of the proposed work and time schedules described in the technical reports submitted in compliance with Directives A. and B., above. Upon receiving such approval, the Discharger shall implement the work in accordance with the time schedules.

D. Payment of Costs Incurred by Board: Pursuant to Water Code section 13304, the Discharger is liable to the Colorado River Basin Water Board with respect to both Directives A. and B. to the extent of the reasonable costs actually incurred by the Board in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. Such costs include the cost of complying with CEQA.

E. General Provisions

1. In accordance with California Business and Professions Code Sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of California registered professionals (i.e., civil engineer, engineering geologist, geologist, etc.) competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain work plans, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain a statement of qualifications of the responsible licensed professional(s) as well as the professional's signature and/or stamp of the seal. Additionally, all field activities are to be conducted under the direct supervision of one or more of these professionals.

2. All technical reports required in conjunction with this Order are required pursuant to Section 13267 of the CWC, and shall include a statement by the Discharger, or an authorized representative of the Discharger, certifying under penalty of perjury under the laws of the state of California, that the report is true, complete, and accurate.

3. The Colorado River Basin Water Board reserves its right to take any enforcement action authorized by law. Accordingly, failure to timely comply with any provisions of this Order may subject the Discharger to further enforcement action. Such actions include, but are not limited to, the assessment of administrative civil liability pursuant to CWC Sections 13323, 13268, and 13350, a Time Schedule Order issued pursuant to CWC Section 13308, or referral to the California Attorney General for recovery of judicial civil liability.

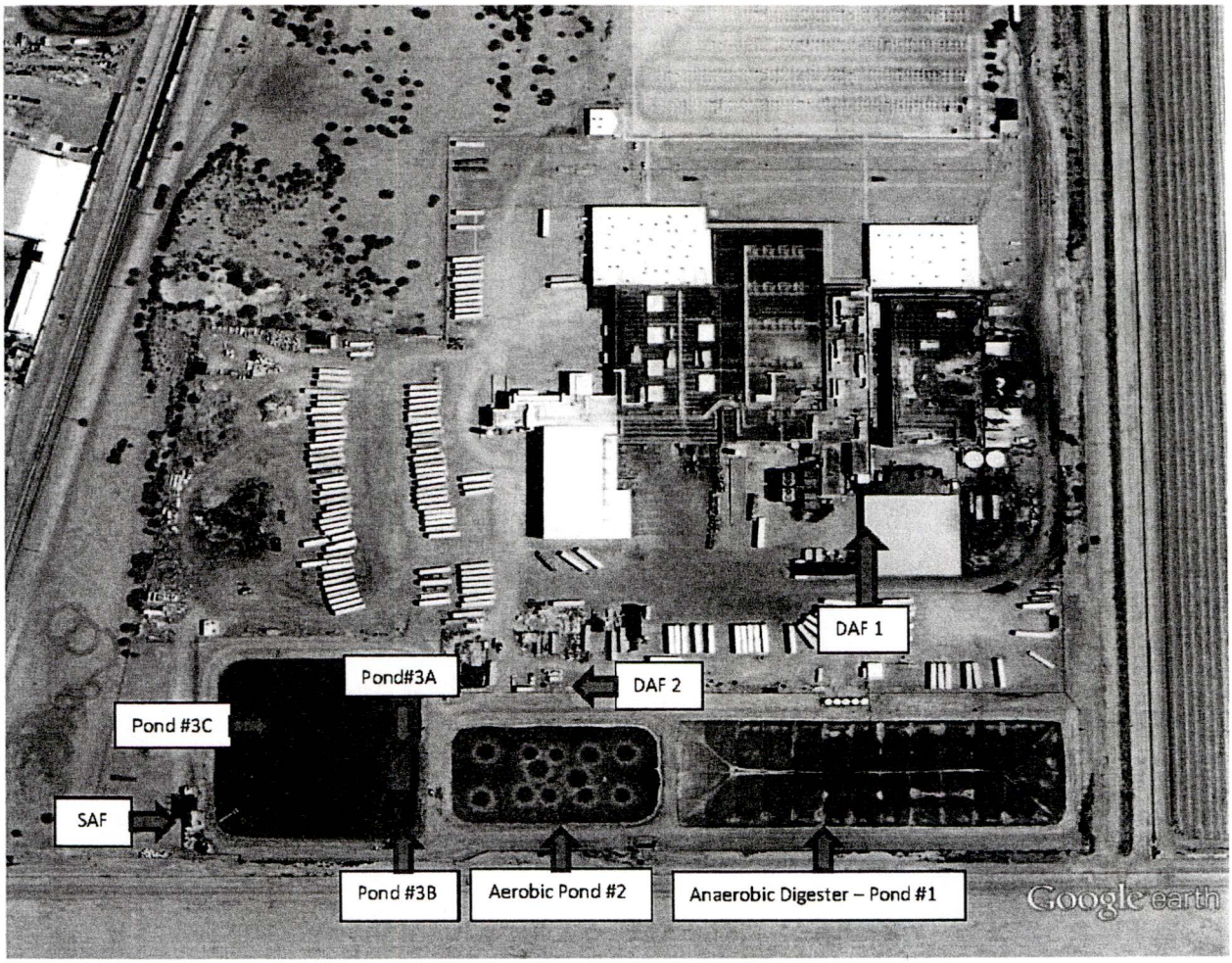
4. The Executive Officer may amend or modify this Cleanup and Abatement Order, as necessary.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on March 20, 2014.

Ordered By: _____
ROBERT PERDUE
Executive Officer

REGIONAL WATER QUALITY CONTROL BOARD - COLORADO RIVER BASIN

ATTACHMENT "A"



FACILITY LAYOUT DIAGRAM
NATIONAL BEEF CALIFORNIA LP
OWNER/OPERATOR
WASTEWATER TREATMENT FACILITY

Brawley – Imperial County