

# **AFGE NBPC Local 2554**

## ***New River Report***

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**Report for Chief Patrol Agent of the El Centro Sector Gloria I. Chavez.**

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## Section 1

### Forward



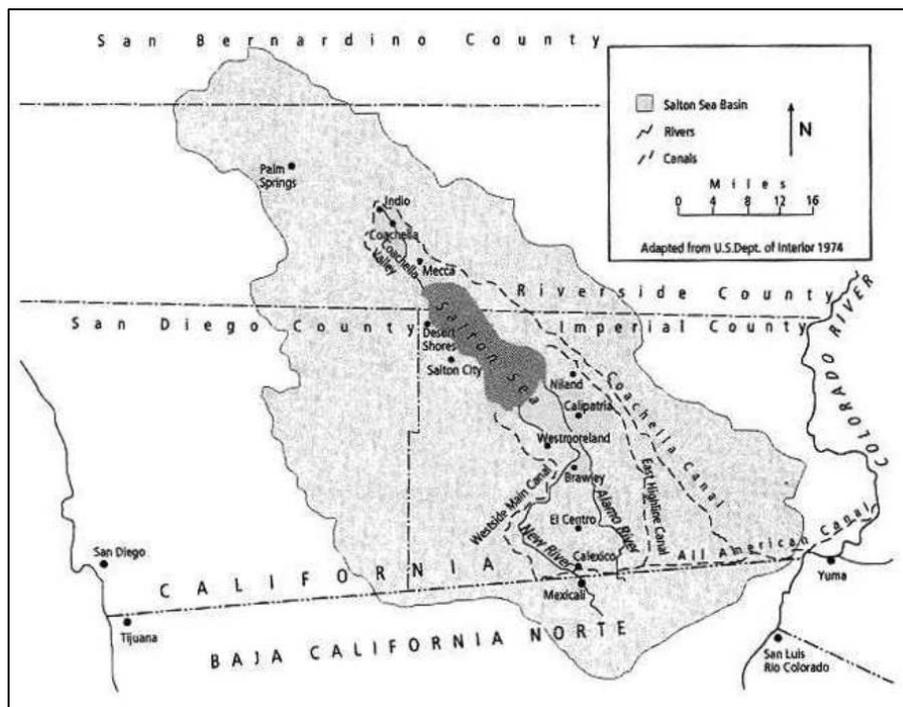
In this report for Chief Patrol Agent (CPA) of the El Centro Sector Gloria I. Chavez, we will, in great detail, describe the environmental hazards faced by the Border Patrol Agents in the El Centro Sector. We will provide evidence from the State of California, and other agencies that will provide data as to the levels of pollution, and the impact it can have on agent's health.

According to Jose Angel the Executive Officer of the Colorado River Basin Regional Water Quality Control Board (**Refer to Appendix 29**) The first thing that one should know and remember regarding the New River is that the New River is not a "river" in the typical sense of the word. It is not a source of drinking water either. It is and functions as a drain. Historically and up to the late 1800's, the Colorado River used to discharge its waters into the Gulf of Baja California and the Salton Sea. When it discharged to the Salton Sea, it would use the New River

and Alamo River channels. In other words, the Colorado River created the New and Alamo Rivers channels. When the Colorado River regained its course to the Gulf, the rivers would eventually dry up (and so would the Salton Sea).

The last time the New River was dominated by fresh water from the Colorado River (e.g., rain and snowmelt) was in 1907, when it and the Alamo River carried the entire contents of the Colorado River into the Salton Sea. Practically since then, the New River has functioned as a drain for the Mexicali and Imperial Valleys. Technically speaking, the New River is part of the Salton Sea Transboundary Watershed. Figure 1, below, shows the Watershed.

It flows south of the border with Mexico about 20 miles and returns north to the border through the city of Mexicali which has a population of approximately 1 million people.



The New River then flows across the US / Mexico border near Calexico and through the Imperial Valley past Seeley, Brawley, Imperial and Westmorland for approximately 65 miles before emptying into the Salton Sea.

As the New River flows through Mexicali it is injected with approximately 14 to 16 million gallons per day (MGD) of treated, partially treated, and raw sewage from the city of Mexicali. For the last thirty year's thanks in large part to Mexicali's population growth, inferior industrial waste control, toxic agricultural runoff (DDT, a pesticide which has been banned in the US since 1972 and banned in Mexico since 2000 but is somehow still in the New River and some agricultural drains in Imperial County), and inadequate sewer system, the New River has gained the title of most polluted river for its size in North America.

The River is a toxic blend of biological pathogens (capable of producing Polio, Typhoid, Cholera, Tuberculosis, Hepatitis,), carcinogens, heavy metals (lead, arsenic, cadmium, thallium, antimony, baron, manganese) pesticides (aldrin, chlordane, DDT, DDD, DDE, heptachlor oxide), PCB's and over 65 volatile organic substances (VOCs). Many of these substances are present in concentrations that violate standards established by The California Regional Water Quality Control Board, under the oversight of the State Water Resources Control Board and USEPA. Fecal coliform (which leads to E-coli) and streptococci are the most evident, especially as it crosses the border. Mosquito colonies that can spring up along the more stagnant portions of the river are known carriers of an Arbovirus which causes Encephalitis.

The New River is approximately 15 to 40 feet wide and ranges in depth from 18 inches to approximately 8 feet. The water alternates between an unnatural shade of green and cola black. Because of the degree of contamination recreational activities such as swimming, fishing, or any other waterway activities in or near the New River are non-existent, and the heavy

contamination in the water creates a health hazard for Border Patrol Agents working along the river and around the Salton Sea.

The most obvious features of the New River are the stench and foam. The river smells like a sewer and the stench easily penetrates even completely sealed vehicles. Moreover, the bank area of the New River in the Calexico area should be assumed to be contaminated also because New River foam sometimes is wind-blown onto the bank and the foam carries pathogen-indicator bacteria. Besides this and often enough, there is also trash in the bank corridor, and trash can also carry pathogens.



## Section 2

### Authority over the New River



### Water Treaty of 1944

The Utilization of Waters of The Colorado and Tijuana Rivers and of the Rio Grande Treaty between the United States of America and Mexico otherwise known as the Water Treaty of 1944 (**Refer to Appendix 1**) establishes that the International Boundary and Water Commission is responsible for implementing a permanent solution to border sanitation problems:

- According to **Minute No. 261**, at El Paso, Texas on September 24, 1979 entitled “*Recommendation for the Solution to the Border Sanitation Problems*” (**Refer to Appendix 2**). The Commission examined the provisions of the 1944 Water Treaty and observed that by the terms of **Article 3**, the two Governments obligated themselves to give preferential attention to the solution of all border sanitation problems. In addition, it noted that the same **Article 3**, together with **Articles 2 and 24**, give the Commission the authority to meet this obligation.
- The Commission agreed to define as a “**border sanitation problem**” each case in which the waters that cross the boundary, including coastal waters, or that flow in the limitrophe reaches of the Rio Grande and the Colorado River, have sanitary conditions that present a hazard to the health and well-being of the inhabitants of either side of the border or impair the beneficial uses of these waters.
- According to **Minute No. 264** at Ciudad Juarez, Chihuahua August 26, 1980 entitled “*Recommendations for the Solution to the Border Sanitation Problem at Calexico, California – Mexicali, Baja California Norte*”, (**Refer to Appendix 3**). Due to the Commission studying the existing border sanitation problems, thus agreed that the New River problem is by far most urgent and shall be the first to be resolved for the benefit of the health and well-being of the citizens of both countries.
- Following are the Qualitative Standards of **Minute No. 264** for the New River at the International Boundary Interim Solution are:

- 1. The water of the river shall be free of untreated domestic and industrial waste water.
- 2. The waters shall be free from substances that may be discharged into the river as a result of human activity in concentrations which are toxic or harmful to human, animal or aquatic life of which may significantly impair the beneficial uses of such waters.
- 3. The waters of the river shall be essentially free from trash, oil, scum, or other floating materials resulting from human activity in amounts sufficient to be injurious, unsightly or to cause adverse effects on human life, fish and wildlife. Persistent foaming shall be avoided.
- 4. The waters of the river shall be free of pesticides in concentrations which could cause harmful effects to human life, fish, and wildlife.
- 5. The channel of the river shall be free of residual sludge deposits from domestic or industrial wastes.
- Thus, all qualitative standards of **Minute No. 264** have never been met, regardless of efforts.
- According to **Minute No. 274**, at Ciudad Juarez, Chihuahua April 15, 1987, entitled “*Joint Project for Improvement of the Quality of the Waters of the New River at Calexico, California – Mexicali, Baja California*”, (**Refer to Appendix 4**). The Commission and authorities of the government of the State of Baja California-

- Mexicali met to consider options presented, for a jointly funded project of sanitation works, which would improve the quality of the waters of the New River.
- According to **Minute No. 288**, at Ciudad Juarez, Chihuahua October 30, 1992, entitled “*Conceptual Plan for the Long-Term Solution to the Border Sanitation Problem of the New River at Calexico, California – Mexicali, Baja California*”, (**Refer to Appendix 5**). The Commissioner referred to the recommendations from the IXth United States/Mexico Binational Commission meeting of September 9, 1991 “the representatives of both Governments agreed that priority attention should be given to the clean-up of the New River and instructed the International Boundary and Water Commission to identify, in the earliest possible time, a framework for solution of the problem”.
  - The Commission also recognized that despite the major effort of the Government of Mexico, the rapid growth has surpassed the coverage capacity. Therefore, discharges into the New River are partially treated or untreated industrial and domestic wastewaters that then cross the international boundary, noncomplying with **Minute No. 264** directing elimination of domestic and industrial wastewater discharges into the New River at the International Boundary.
  - According to **Minute No. 289** at El Paso, Texas November 13, 1992, entitled “*Observation of the Quality of the Waters Along the United States and Mexico Border*” (**Refer to Appendix 6**). Also authorizes the ongoing toxicity survey referenced in the Joint Report of Principal Engineers and makes a commitment by the United States and Mexico to improve the binational water quality monitoring program that was established by the IBWC in 1987 as an initial program. An

- important goal in Minute No. 289 is the development of a binational water quality database for the border waters.
- ***La Paz Agreement of 1983***, is an agreement between the United States of America and Mexico signed on August 14, 1983 on Cooperation for the Protection and Improvement of the Environment in the Border Area (**Refer to Appendix 7**).
  - According to “**Article 1**”, The United States of America and the United Mexican States agreed “to cooperate in the field of environmental protection in the border area on the basis of equality, reciprocity and mutual benefit”. Some of the objectives “are to establish the basis for cooperation between the Parties for the protection, improvement and conservation of the environment and the problems which affect it, as well as to agree on necessary measures to prevent and control pollution in the border area, and to provide the framework for development of a system of notification for emergency situations”.
  - According to “**Article 2**”, The Parties should undertake, “to the fullest extent practical, to adopt the appropriate measures to prevent, reduce eliminate sources of pollution in their respective territory which affect the border area of the other”. It is stated that the Parties, “shall cooperate in the solution of the environmental problems of mutual concern in the border area, in accordance with the provisions of this agreement”.
  - According to “**Article 4**”, the purposes of this agreement “it shall be understood that the “**border area**” refers to the area situated **100 kilometers** on either side of the inland and maritime boundaries between the parties”.

- According to “**Article 5**”, “The Parties agree to coordinate efforts, in conformity with their own national legislation and existing bilateral agreements to address problems of air, land and water pollution in the border area”.
- According to “**Article 6**”, In order for the implementation of this agreement, “the Parties shall consider and, as appropriate, pursue in a coordinated manner practical, legal, institutional and technical measures for protecting the quality of the environment in the border area”. Some of the forms of cooperation for instance are stated “scientific and educational exchanges; environmental monitoring; environmental impact assessment; and periodic exchanges of information and data on likely sources of pollution in their respective territory which may produce environmentally polluting incidents, as defined in an annex to the Agreement”.
- According to “**Article 8**”, “In the case of the United States of America the national coordinator shall be the Environmental Protection Agency, and in the case of Mexico it shall be the Secretaria de Desarrollo Urbano y Ecologia, through the Subsecretaria de Ecologia”.
- According to “**Article 12**”, “Nothing in this Agreement shall prejudice or otherwise affect the functions entrusted to the **International Boundary and Water Commission, in accordance with the Water Treaty of 1944**. 1 Treaty relating to the utilization of water of the Colorado and Tijuana Rivers and of the Rio Grande. Signed at Washington Feb. 3, 1944 and supplementary protocol signed Nov. 14, 1944. TS 994; 59 Stat. 1219”.

- According to “**Annex II-Article I**”, “**A polluting incident**” means a discharge or the threat of a discharge of any hazardous substance on one side of the inland international boundary of a magnitude which causes, or threatens to cause, imminent and substantial adverse effects on the public health, welfare, or the environment”. Thus, “**Environment**” means the atmosphere, land, and surface and ground water, including the natural resources therein, such as fish, wildlife, forests, crop and rangeland, rivers, streams, aquifers and all other components of the ecosystem”. “**Hazardous substances**” means elements and compounds which if discharged present or may present an imminent and substantial danger to the public health, welfare or the environment according to the laws of each party and the determination of the Joint Response Team (JRT)”. Thus, the responsibilities of the Joint Response Team are defined in **Appendix 11**.
- According to “**Annex II-Article VII**”, “Nothing in this Agreement shall prejudice or otherwise affect the functions entrusted to the International Boundary and Water Commission, in accordance with the Water Treaty of 1944”.
- According to “**Annex III-Article I Definitions**”, **9**. “Banned or severely restricted” means final regulatory action, as designated or defined by the applicable designated authority, pursuant to national policies, laws or regulations”.
  - (a) Prohibiting, canceling or suspending all or virtually all registered users of a pesticide for human health or environmental reasons.
  - (b) Prohibiting or severely limiting the manufacture, processing, distribution or use of a chemical for human health or environmental reasons.

- **Federal Water Pollution Prevention and Control Act (“Clean Water Act”) 33 U.S.C. section 1251** et seq. Congress passed the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nations waters”. Violations relate to the continuing discharge of millions of gallons of waste consisting of untreated sewage, bacteria, pesticides, chemicals and heavy metals (**Refer to Appendix 8) Sections 301, 402, 1311, 1342, 1365(a)-** citizens suit provision 28 USC 1331, 1346,
- **Porter-Cologne Act-** is intended to protect, restore and prevent degradation of the quality of beneficial uses of the waters of the state and on the United States.
- The following are the California Water Codes, which primarily mandates the Regional Water Quality Control Boards jurisdiction over Water Quality and the beneficial uses in the State of California.
- **California Water Code Section 13000** The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by inter basin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy. (*Repealed and added by Stats. 1969, Ch. 482.*)

**CA Water Code Section 13001** It is the intent of the Legislature that the state board and each regional board shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The state board and regional boards in exercising any power granted in this division shall conform to and implement the policies of this chapter and shall, at all times, coordinate their respective activities so as to achieve a unified and effective water quality control program in this state. *(Repealed and added by Stats. 1969, Ch. 482.)*

**CA Water Code Section 13200** The state is divided, for the purpose of this division, into nine regions: (i) Colorado River Basin region, which comprises all basins east of the Santa Ana and San Diego regions draining into the Colorado River, Salton Sea and local sinks from the southerly boundary of the Lahontan region to the California-Mexico boundary.

**CA Water Code Section 13241** Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.

*(Amended by Stats. 1991, Ch. 187, Sec. 2.)*

**CA Water Code 13242** The program of implementation for achieving water quality objectives shall include, but not be limited to:

- (a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.
- (b) A time schedule for the actions to be taken.
- (c) A description of surveillance to be undertaken to determine compliance with objectives. *(Added by Stats. 1969, Ch. 482.)*

**CA Water Code Section 13377** Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all

applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance. (*Amended by Stats. 1978, Ch. 746.*)

- California Water Quality Control Board Region 7- Basin Plan, Beneficial uses for the New River and definitions. (**Refer to Appendix 9**). The New River beneficial uses are REC I, REC II, FRSH WILD, RARE, WARM.
- According to Division 7 of the California Water Code (aka Porter Cologne Water Quality Control Act), which requires the Regional Board to consider past as well as present and probable future beneficial uses when establishing water quality objectives. Therefore, Section 13050 (f) of Division 7 describes “beneficial uses” as the following: “Beneficial uses of the waters of the State that may be protected against quality degradation include, but are necessarily limited to, domestic, municipal, and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.”
- California Code of Regulations (Porter-Cologne Act) Section 13263- requires that Waste Discharge Requirements be prescribed for any discharge that could affect the quality of the waters of the state, other than into a community sewer system. All industrial discharges that meet this definition are regulated with Waste Discharge Requirements.

## Section 3

### Documented Hazards in the New River

The Colorado River Basin Regional Water Quality Control Board has had a sampling program for the New River at the International Boundary since the 1970's. They have monitored the New River for conventional pollutants, including biological oxygen demanding constituents (BOD, dissolved oxygen, total suspended solids), pathogen-indicator bacteria (e.g., Fecal coliforms), and nonconventional pollutants (e.g., Minerals, metals, and volatile organic constituents typically associated with industry), and pesticides (soluble and insoluble pesticides associated with agricultural runoff).

The pathogen-indicators is the measurement used to assess whether the New River meets its beneficial uses and water quality objectives for water contact and non-contact recreation and to assess its threat to public health.

The main regulatory standards that one needs to use to assess the threat the New River poses to public health are the numeric bacteria WQOs and the Water Contact Recreation and Non-Contact Water Recreation (a.k.a. REC-I and REC-II, respectively) beneficial uses the State has established and USEPA has approved for the entire stretch of the New River in the US. The numeric bacteria standards are contained in the Basin Plan and are:

| <u>Indicator Parameters</u> | <u>30-day Geometric Mean</u> | <u>Maximum</u> |
|-----------------------------|------------------------------|----------------|
| Fecal Coliforms             | 200 MPN /100 ml              | c              |
| E. Coli                     | 126 MPN/100 ml               | 400 MPN/100 ml |
| Enterococci                 | 33 MPN/100 ml                | 100 MPN/100 ml |

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- a. Based on a minimum of no less than 5 samples equally spaced over a 30-day period.
- b. Most Probable Number.
- c. No more than 10% of total samples during any 30-day period shall exceed 400 MPN/100 ml.

Please note that pathogen-indicator standards are used as opposed to using specific pathogens. The reason for this are two-fold: (1) epidemiological studies conducted by various agencies, including USEPA, consistently show that if the pathogen-indicator organisms are present above the above-mentioned numeric standards, the waterbody is not suitable for contact recreation (i.e., people who come in contact with that waterbody can get sick); and (2) running the tests for pathogen-indicators is a lot cheaper and practicable than running tests for specific pathogens (e.g., TB bacterium, tetanus bacterium, encephalitis viruses, etc.). This is not to say that actual pathogens have not been detected in the River. They have been detected by various agencies, including the polio virus by the State. Additionally, Imperial County in the past has detected Salmonella and Shigella, and has isolated New River mosquitoes that harbor the encephalitis virus (**Refer to Appendix 29**).

The main thing anyone who works in the area of or comes in contact with the New River should know and remember is that the State, with approval from USEPA, has determined that the River is in fact polluted from the Border to the Salton Sea by a slew of pollutants, including pathogen-indicator organisms, trash, pesticides, nutrients, oxygen-demanding constituents, and metals<sup>13</sup>. This determination has been made pursuant to the Clean Water Act, in a manner consistent with the State's Impaired Waters Policy, and based on a rigorous evaluation of extensive body of New River water quality monitoring data collected by various agencies in the US, including the Colorado River Basin Water Board, USGS, and US Section of the

International Boundary and Water Commission (US IBWC), among others. The tables in Appendix A show: (1) typical densities of pathogenic organisms found in raw sewage; (2) infectious agents and their diseases for raw sewage; and (3) bacteria and virus densities typically present in secondary treated, but undisinfected wastewater.

In particular, the River is not safe for contact recreation at any location even though the bacterial threat by the Salton Sea is minimal. The Calexico Reach is for all practicable purposes where the River poses the highest threat to public health because that is where pathogen-indicator organisms are present at the highest densities (**Refer to Appendix 29**). However, make no mistake: the entire stretch of the New River is impaired by bacteria and, therefore, the River presents a public health hazard regardless of whether Mexico is discharging raw sewage. When there is raw sewage from Mexicali in the River, monitoring data from the Colorado River Basin Water Board and US IBWC show that bacteria are present at densities  $> 16,000,000$  MPN/100 ml. Even when there is no raw sewage and the sewage collection and treatment system in Mexicali is seemingly working fine, fecal coliforms levels in the River as it enters Calexico are in the order of 6,000 – 160,000 MPN/100 ml, which grossly exceed the upper regulatory limit of 400 MPN/100 ml. Based on these facts, it stands to reason that the presence of pathogens (e.g., specific pathogenic viruses, infectious bacteria, etc.) should be considered a given in the River, regardless of whether Mexico discharges raw sewage into the New River. Put simply, treated but undisinfected municipal wastewater, like the wastewater discharged from the Zaragoza WWTP into the New River in Mexicali, is bound to have pathogens at densities that threaten public health. If there is raw sewage from Mexicali, the threat is significantly higher at all River reaches. Further, when it rains in measurable amounts in Mexicali ( $> 0.10''$ ), the resulting runoff “flushes” Mexicali and, therefore, it is grossly contaminated with a slew of pollutants, including

more pathogens. All of this means that anyone who comes in contact with New River, regardless of whether there is raw sewage or stormwater runoff, runs a serious risk of becoming ill, particularly if that person ingests its water and/or has a compromised immune system. At best, when a person comes in contact with the New River water, that person is “contaminated” and, therefore, a potentially carrier of pathogens. Moreover, the bank area of the New River in the Calexico area should be assumed to be contaminated also because New River foam sometimes is wind-blown onto the bank corridor and the foam carries pathogen-indicator bacteria. Besides this and often enough, there is also trash in the bank corridor, and trash can also carry pathogens.

Considering the foregoing, people should avoid contact with the River as a first line of defense. People who must work in the area of the New River and whose job duties indicate that exposure to New River water is a high probability should consult with their Industrial Hygienist/Management about the protocols/measures they must follow (e.g., use adequate Personal Protective Equipment) to: (1) minimize potentially incidental contact with its water, and (2) know what to do in case of contact with the water (e.g., decontamination procedures, medical attention, etc.).

According to the California Regional Water Quality Control Board Colorado River Basin Region 7 Resolution No. R7-2017-0022 “Since November 2016, there has been an average of one bypass of raw sewage per month. The bypasses have ranged in magnitude from 1-13 million gallons per day. There were three to five known by passes in 2018. The bypasses pose a serious health threat to California residents and people in the Imperial Valley.” **(Refer to Appendix 11)**

The same document “Recognizes that the bypasses of raw sewage into the New River result in a public health hazard in the Calexico area that must be dealt with as an emergency crisis”. Copies of this document were sent to the United States Environmental Protection

Agency, the United States International Boundary and Water Commission, the NADBank/BECC, California Environmental Protection Agency, the State Water Resources Control Board, and to others. To date there has been no response Per California Regional Water Quality Control Board Colorado River Basin Region 7 Staff email (**Appendix 12**).

According to a Committee on Environmental Safety and Toxic Materials New River Restoration Oversight Hearing held on March 20, 2015 (**Refer to Appendix 13**).

“The raw sewage in the New River also violates Treaty Minute environmental and water quality standards between the US and Mexico.” And “not treating key dilapidated or broken sewage infrastructure in Mexicali as a matter of emergency, even though it clearly poses a significant threat to California.”

The report is from March 20, 2015 and it states “fixing these obvious problems needed to be done at least two years ago to avoid what is happening now –large discharges of raw sewage into the New River. There are also binational institutions in place already that were set up precisely to fund sewage infrastructure: The North American Development Bank (NADBank) and the Border Environment Cooperation Commission (BECC).” Meaning the repairs to Mexico’s sewage infrastructure needed to be done in 2013 to avoid the sewage bypasses we are experiencing today in 2018.

The New River is currently on the 303(d) List of Impaired Water Bodies. The New River has never met the standards for Rec 1 and Rec 2. The New River was placed on the 303(d) List as impaired for pathogens. Bacteria, which are pathogen-indicator organisms, impair the entire segment of the New River in the United States. The impairment is most severe at the International Border due to discharges of waste from Mexico (**Refer to Appendix 14**).

The New River beneficial uses according to the California Regional Water Quality Control Board Colorado River Basin Region 7, Water Quality Control Plan are the following: Recreation I, Recreation II, Fresh Water, Rare, Warm.

The New River is currently tested by The California Regional Water Quality Control Board Colorado River Basin Region 7. The standard for Fecal Coliform is 240 MPN/100mL. based on a minimum of no less than 5 samples equally spaced over a 30-day period, the most probable number, with no more than 10% of the total samples during any 30-day period shall exceed 400 MPN/100ml.

The results of the testing done by the California Regional Water Quality Control Board Colorado River Basin Region 7 (**Refer to Appendix 15**) shows that the Fecal Coliform numbers for the last 10 years are as follows:

January 2018 – June 2018 are 9,500 MPN/100mL to 40,000 MPN/100mL  
 January 2017 - December 2017 was between 12,000 MPN/100mL to >160,000 MPN/100mL  
 January 2016 – December 2016 was between 11,000 MPN/100mL to >160,000 MPN/100mL  
 January 2015 – December 2015 was between 7,500 MPN/100mL to >160,000 MPN/100mL  
 January 2014 – December 2014 was between 1,000 MPN/100mL >160,000 MPN/100mL  
 January 2013 – December 2013 was between 100 MPN/100mL to 1,150,000 MPN/100mL  
 January 2012 – April 2012 was between 10,025 MPN/100mL to 10,912 MPN/100mL  
 January 2011 – December 2011 was between >1,600 MPN/100mL to 90,817 MPN/100mL  
 January 2010 – December 2010 was between 6,500 MPN/100mL to 550,000 MPN/100mL  
 January 2009 – November 2009 was between 2,000 MPN/100mL to >160,000 MPN/100mL  
 January 2008 – October 2008 was between 2,300 MPN/100mL to >160,000 MPN/100mL

In 2012 they only took samples on two days 01/24/12 and 04/25/12 the numbers are based on those two days. In 2013 the 1,150,000 MPN/100mL sample was taken on 09/11/13 the next highest sample besides that one was taken on 12/04/13 and that sample measured 470,000

MPN/100mL. Please keep in mind the number that would bring the New River into compliance the number that is acceptable under the 1944 Water Treaty is 240 MPN/100ml, with the upper regulatory limit of 400 MPN/100ml. **(Refer to Appendix 29)**

The New River also exceeds water quality standards (WQS) for **Chlorpyrifos** and **Diazinon**, and was placed on the 303(d) List as impaired for both pesticides. Increased Chlorpyrifos use in Imperial County in recent years is reflected in the increased concentrations in the New River according to the Water Quality Report Card Released October 2016 **(Refer to Appendix 16)**. It also states that attainment date is December 2018.

**Chlorpyrifos** was also listed by the Office of Environmental Health Hazard Assessment on December 15, 2017 as causing reproductive and developmental toxicity on Proposition 65 list **(Refer to Appendix 17)**. On August 9, 2018 the United States Court of Appeals for the Ninth Circuit, ordered the United States Environmental Protection Agency to implement a ban within 60 days for Chlorpyrifos. According to Imperial Irrigation District Report submitted to California Water Quality Control Board Region 7 in accordance with Resolution R7-2015-008, Conditional Waiver of Waste Discharge Requirements for Annual Reports July 2016-December 2016 and January 2017-December 2017. The Reporting limit for Chlorpyrifos is 2.0, but the average and median reporting for both Annual Reports is 18.0-20.0 **(Refer to Appendix 18)**.

**Diazinon** was banned by the United States in December 2000.

According to Resolution R7-2014-0025 entitled **(Refer to Appendix 19)**, *“Proposed Revisions to the Clean Water Act Section 303(d) List of Impaired Water Bodies and Preparation of the 2012 Integrated Report”*, the following was added as impaired in the New River and other constituents of concern are already listed:

**Malathion** was listed on the Prop 65 list by the Office of Environmental Health Hazard Assessment on May 20, 2016 as causing Cancer (**Refer to Appendix 20**).

**Chlordane** was banned in 1983 by the U.S. Environmental Protection Agency, except for controlling termites. It was listed on the Prop 65 list by the Office of Environmental Health Hazard Assessment on July 1988 as causing Cancer (**Refer to Appendix 21**).

**Toxaphene** was listed on the Prop 65 list by the Office of Environmental Health Hazard Assessment on January 1, 1988 as causing Cancer (**Refer to Appendix 22**). The United States banned Toxaphene as a pesticide in 1990.

**Dichlorodiphenyltrichloroethane (DDT)** was listed on the Prop 65 list by the Office of Environmental Health Hazard Assessment (OEHHA) on January 1, 1988 as causing Cancer (**Refer to Appendix 23**). The Office of Environmental Health Hazard Assessment also listed DDT in May 15, 1998 as causing Reproductive and Developmental Toxicity for females and males (**Refer to Appendix 23**). The United States Environmental Protection Agency banned DDT in December 1972.

**Dieldrin** was listed on the Prop 65 list by the Office of Environmental Health Hazard Assessment on July 1, 1988 as causing Cancer (**Refer to Appendix 24**). The United States Environmental Protection Agency banned Dieldrin in 1978, except to control termites.

**Polychlorinated Biphenyl (PCBs)** was listed on the Prop 65 list by the Office of Environmental Health Hazard Assessment on October 1, 1989 as causing Cancer, and causing Developmental Toxicity on January 1, 1991 (**Refer to Appendix 25**). The United States banned PCBs in 1979.

**Cypermethrin** – The United States Environmental Protection Agency has classified Cypermethrin as a possible human carcinogen but, there is limited evidence that it causes cancer in animals.

**Bifenthrin** - The United States Environmental Protection Agency has classified Cypermethrin as a possible human carcinogen.

**Naphthalene** was listed on the Prop 65 list by the Office of Environmental Health Hazard Assessment on October 1, 1989 as causing Cancer (**Refer to Appendix 26**).

**Nitrogen Ammonia (Total Ammonia)** - Ammonia is a nutrient that contains nitrogen and hydrogen. Its chemical formula is  $\text{NH}_3$  in the un-ionized state and  $\text{NH}_4^+$  in the ionized form. Total ammonia is the sum of both  $\text{NH}_3$  and  $\text{NH}_4^+$ . Total ammonia is what is measured analytically in water.

Even though experts have stated that the main threat to agent's health is the pathogen-indicator organisms associated with raw sewage and treated but undisinfected municipal wastewater. However, please keep in mind that certain pesticides are also harmful to people (**Refer to Appendix 10**). The above-mentioned pesticides can affect agent health if ingested like drinking water. Many of the above-mentioned pesticides have been banned in the United States and are linked to causing cancer. They are present in the New River at levels that are in violation to US Laws.

## Section 4

### Impact on Border Patrol Agents Health



According to the most current memorandum about Hazard Pay Differential signed by then Acting Chief Carla L. Provost Aug 18 2017 (**Refer to Appendix 27**) Virulent biologicals. Are “Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection.”

The New River has pathogen-indicator bacteria at densities that exceed the US standards, and this in itself makes the New River a health hazard for anyone that comes in contact with it.

Raw sewage from Mexico contains biological pathogens (capable of producing Polio, Typhoid, Cholera, Tuberculosis, and Hepatitis) To put it plainly if a Mexican Citizen has one of these diseases and goes to the bathroom to urinate, defecate, throw up, or bleed, or spit, those pathogens are alive outside of the carrier's body and other people can contract the disease by coming into contact with the virulent biological pathogens.

For instance, certain pathogens can survive in sewer pipes, other cannot, but the Zaragoza Waste Water Treatment Plant in Mexicali releases municipal treated but undisinfected wastewater into the New River right before it crosses the border. It takes 2 hrs. to pump the treated but undisinfected wastewater to the New River that means the certain viruses are alive in this environment for up to 24 hours.

The New River travels at a rate of approximately one mile per hour until it dumps into the Salton Sea. That means certain viruses will be alive in the New River up to and possibly past the first 6 miles the New River travels inside the United States. Most of the illegal aliens arrested in the New River are arrested at the first or second New River Gates or within the first mile of the New River after it crosses the border. That means if an agent goes into the New River with an open cut or gets cut during an assault or use of force in the New River or if the agent is splashed with New River water and it gets in the agents' eyes or mouth that agent has a chance that they will contract certain diseases or viruses.

Most agents that work along the New River have entered the New River to apprehend illegal aliens, or helped illegal aliens out of the New River thus exposing themselves to the New River water. Most agents have worked on windy nights and been exposed to the contaminated soil. A large portion of our Tahoe's and War Wagons are not equipped with cabin filters.

Many agents including myself have tracked groups across the New River to the mesas along the north side of the New River and had their legs sink into the mud up to their knees, when the agents extract their limbs from the mud their limbs are covered with a black oil like substance of unknown composition or origin.

Most agents have reported suffering from flu like symptoms while working along the New River and have to call in sick the day after a shift on the New River. Many agents have suffered skin rashes and open sores due to contact with the New River. Some agents have reported blurred vision and extreme headaches. Agents who have been fully immersed in the New River have suffered urinary tract infections and have a rash and persistent itching after multiple showers. When New River water gets in an Agents mouth the agent's bodies react similar to food poisoning there is vomiting and diarrhea.

It is not uncommon to observe most patrol vehicles in the affected area have heavy mud accumulation on the tires, wheel wells and undercarriage. The Calexico and El Centro Stations do not have wash racks that have under carriage washers. The lack of thorough vehicle cleanliness exposes Border Patrol mechanics to the hazard.

Every time our agents are exposed to the New River by being immersed in the water or having the water thrown in their faces by smugglers, they are exposed to chemicals that are not supposed to be in the New River. Our Agents are exposed to pesticides in the fields they track groups through, pesticides in the New River, the pathogen-indicator organisms in the New River, and the air quality that has also been found to cause various cancers. The environment our agents are working in is a threat to their health.

## **Section 5**

### **Conclusion and Recommendations**

The Mission of the U.S. Border Patrol is to detect and prevent illegal aliens, terrorist, and terrorist weapons from entering the United States, and prevent illegal trafficking of people and contraband. When individuals sign on to be a U.S. Border Patrol Agent, they agree to horrible odds in the most desolate places with little or no back up. They understand they may be shot, stabbed, or hit in the head with large rocks. But agents do not count on levels of pollution in the areas they work, which may be silently killing them on a day to day basis.

As we are now informed of the many severe hazards our Agents have faced working on the New River, we would like to proceed as recommended in Appendix 30 to consult with an Industrial Hygienist/Management about the protocols/measures we must follow (e.g., use adequate Personal Protective Equipment) to: (1) minimize potentially incidental contact with the New River water, and (2) know what to do in case of contact with the water (e.g., decontamination procedures, medical attention, etc.). It is the opinion of NBPC Local 2554 that at a minimum, at this time the best remedy of the New River situation is to pay agents Hazard Duty Pay for working in Zones 9, 10, 11, and 12. Acquire, outdoor showers for the Illegal Aliens apprehended in the New River, and the Border Patrol Agents working along the New River. A New River Decontamination kit should be added to the DRK bags in every vehicle. Cabin filters installed in all vehicles that do not currently have cabin filters, and an undercarriage washing system installed for the mechanics.

According to Occupational Safety and Health Administration (OSHA) law, employers have the responsibility to provide a safe workplace. The OSHA Act's general duty clause for federal agencies, 29 CFR 1960.8(a) states:

The head of each agency shall furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

To prove a violation of the general duty clause, OSHA must show all of the following:

1. A work place hazard was allowed to exist.
2. The hazard was or should have been recognized by the employer.
3. The hazard caused or was likely to cause death or serious physical injury.
4. Feasible means exist to abate the hazard and were not used.

Keeping in mind most work place safety violations occur in a controlled environment, the Agency must nevertheless provide employees with a workplace free from serious recognized hazards. There are several steps the employer can utilize to abate a hazard, called the Hierarchy of Hazard Controls. It is preferable for the employer to completely eliminate the hazard because it is the most effective step. Substitution of the hazard follows. The employer's next step is to utilize engineering controls, which is to isolate people from the hazard. The next step, administrative controls are used to change the way people work. Lastly, the last and least effective way to mitigate a hazard is the use of personal protective equipment (PPE). PPE protects the worker when no other options exist and they are required to work with the hazard. The Agency cannot eliminate the hazard. This step is not feasible since this hazard is not in a controlled work environment (OSHA's first criterion).

Even though in the Settlement Agreement between John G. Abbott, et al. v. The United States otherwise known as the New River Lawsuit states in 6. a. "Defendant will make available to agents at a convenient location disposable dust masks, latex gloves, and anti-bacterial gel." These items do not protect the employee when they are fully submerged in the New River or when smugglers splash contaminated water on the agents. Section 6. e. states "Defendant will provide two to four hours of training to the agents per year regarding hazards related to the

Tijuana and New Rivers (**Refer to Appendix 28**)". This training has not been provided the last 16 years.

During the *Abbott v. The United States* No. 94-424 C proceedings, Judge Emily Hewitt agreed OPM's Pay for Duty Involving Physical Hardship or Hazard regulations entitle plaintiffs to hazard duty pay for performing jobs that potentially expose them to virulent biologicals and she did not believe that the regulations require actual exposure to virulent biologicals. However, the court agreed with the Agency that as a threshold matter, plaintiffs must show that contact with the suspected waters would pose a risk of exposure to virulent biologicals.

In order to meet the prima facia criteria, employees must show the contact with the water will pose a risk of exposure to virulent biologicals. The US has acknowledged that the New River is polluted, the USEPA has approved the state's 303(d) List, which has the New River listed as polluted by quite a number of pollutants. Due to the severity of the raw sewage, the high E. Coli counts, and the requirement for agents to continue work in the area, it is the opinion of NBPC Local 2554 that employees can show contact with the New River poses a risk of exposure to virulent biologicals. Also, airborne issues at the New River are severe, thus an Agent does not need to be in contact, but rather just be posted at a close proximity for the hazard to be airborne. It is the opinion of NBPC Local 2554 that the requirements for hazardous duty pay have been met.

Local 2554 believes that the BPA's working in zones 9, 10, 11 & 12 should receive Hazard Duty Pay for their proximity to the New River. Local 2554 also believes that agents in the El Centro Sector should also receive Hazard Duty Pay for the following hazards:

The Alamo River which is just as polluted as the New River.

The exposed playa from the Salton Sea which is going to get worse since the water inflow to the Salton Sea has decreased.

Air Quality in Imperial County California has been documented as worse than the air quality by some burn pits in Afghanistan. Imperial County is Designated Nonattainment for 5 National Ambient Air Quality Standards (NAAQS) Per the United States Environmental Protection Agency.

Agents stationed along the Border in Calexico are exposed to severe levels of PM 2.5 due to the emissions at Port of Entry, Agriculture burning in Imperial County. Agents working along the Checkpoints along Hwy 86 and Hwy 111 are exposed to severe high levels of PM 10. The standard for PM 10 is 50  $\mu\text{g}/\text{m}^3$ , but the area which Agents are stationed exceeds the standard and goes up to 1,200  $\mu\text{g}/\text{m}^3$ .

Heat may also be classified as a Hazard; Imperial County is one of the hottest areas in the United States with temperatures that sometimes reach 120 degrees in the summer. Indio Agents are tracking groups through the Chocolate Mountain Aerial Gunnery Range, which exposes them to high levels of lead, and unexploded ordinance.

## **SECTION 6**

### **Request for Hazardous Duty Pay**

Throughout the Sections in this proposal we have provided in detail and substantial evidence of the hazards Border Patrol Agents face in the El Centro Sector. These hazards are not mentioned in the job description of a Border Patrol Agent thus, we are requesting under the United States Codes (Authority) 5545(d), 5548(b) and Title 5 Code of Federal Regulations Pt. 550, Subpart. I, App A., referenced below for Border Patrol Agents working at the New River, in Calexico California or in a close proximity with the chance of exposure while performing their duties shall be granted hazardous pay. The following are the categories for Hazards Border Patrol Agents are exposed too. NBPC Local 2554 believes that the hazard of working in close proximity of the New River falls into the category of: Exposure to Hazardous Weather of Terrain, Hot Work, Toxic Chemicals, Virulent Biologicals and Dust, which would entitle agents to the Hazard Pay Differential Rate. The following is the criteria listed below with substantial evidence to grant and entitle Border Patrol Agents with Hazardous Pay.

Office of Personnel Management

Pt. 550, Subpart. I App. A

Subpart I – Pay for Duty involving Physical Hardship or Hazard

Authority: U.S.C. 5545(d), 5548(b)

550.901                      Purpose.

This subpart prescribes the regulations required by sections 5545(d) and 5548(b) of title 5, United States Code, for the payment of differentials for duty involving unusual physical hardship or hazard to employees.

[56 FR 20344, May 3, 1991]

550.902 Definitions.

In this subpart: Agency has the meaning given that terms in 5 U.S.C. 5102(a) (1).

Duty involving physical hardship means duty that may not in itself be hazardous but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust or noise that causes nausea, skin, eye, ear, or noise irritation.

Employee means an employee covered by the General Schedule (i.e., covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code).

Hazardous duty means duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain or high wind velocity exist.

Hazard pay differential means additional pay for the performance of hazardous duty or duty involves physical hardship.

Head of an agency meant the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

[56 FR 20344, May 3, 1991, as amended at 59 FR 33416, June 29, 1994; 64 FR 69194, Dec. 10, 1999]

APPENDIX A TO SUBPART I OF PART 550 --- SCHEDULE OF PAY  
DIFFERENTIALS AUTHORIZED FOR HAZARDOUS DUTY UNDER PART I  
HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION  
(GENERAL)

Duty

Exposure to Hazardous Weather of Terrain:

(1) Work in rough and remote terrain. When working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches.

Border Patrol Agents working along the New River are at risk of falling into the New River, some Agents also have entered the New River to apprehend illegal immigrants and drugs.

Rate of Hazard pay differential (percent) 25

Effective Date: First pay period beginning after July 1, 1969

Exposure to Physiological Hazards:

(4) Hot work – Working in confined spaces wherein the employee is subject to temperatures in excess of 43 C degrees (110 F).

Border Patrol Agents working along the New River are exposed to extreme temperatures of over 110 Fahrenheit degrees approximately May to September.

Rate of Hazard pay differential (percent) 4

Effective Date: First pay period beginning after Feb. 16, 1975.

Exposure to Hazardous Agents, work with or in close proximity to:

(2) Toxic chemical materials. Toxic chemical materials when there is a possibility of leakage or spill.

Border Patrol Agents working along the New River are exposed to Toxic Chemicals, which are being discharged into the New River, the following: Chlorpyrifos (Refer to Appendix 17), Malathion (Refer to Appendix 20), Chlordane (Refer to Appendix 21), Toxaphene (Refer to Appendix 22), DDT (Refer to Appendix 23), Dieldrin (Refer to Appendix 24), Polychlorinated Biphenyl (PCBs) (Refer to Appendix 25), Naphthalene (Refer to Appendix 26), Cypermethrin: the United States Environmental Protection Agency has classified Cypermethrin as a possible human carcinogen, but there is limited evidence that it causes cancer in animals, Bifenthrin: as a possible human carcinogen by the United States Environmental Protection Agency; the listed pesticides are also airborne, and most of these are classified as causing cancer.

Per the California Regional Water Quality Control Board Region 7, and approved by the United States Environmental Protection Agency as listing the New River is listed as an impaired body of water (Refer to Appendix 14 and 15) for substantial evidence.

Rate of Hazard pay differential (percent) 25                      Effective Date: Do.

(5) Virulent Biologicals. Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection.

Border Patrol Agents are exposed to the raw sewage in the New River (Refer to Appendix 10, 11, 13, 14, 15, 29) besides Agents entering the New River, they are also splashed with the contaminated New River water by the illegal aliens being apprehended. Per the

California Regional Water Quality Control Board Region 7, and approved by the United States Environmental Protection Agency the New River is listed as an impaired body of water.

Rate of Hazard pay differential (percent) 25                      Effective Date: Do

Hazardous Pay for Air Quality – Dust

550.902                      Definitions.

In this subpart: Agency has the meaning given that terms in 5 U.S.C. 5102(a) (1).

Duty involving physical hardship means duty that may not in itself be hazardous but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust or noise that causes nausea, skin, eye, ear, or noise irritation.

Per the United States Environmental Protection Agency, Imperial County is currently a Nonattainment County for all Criteria Pollutants, Particulate Matter 2.5 and Particulate Matter 10. The County currently exceeds the State and Federal Standards.

On behalf of the members of NBPC Local 2554 we would like to thank CPA Gloria I. Chavez and Chief Carla Provost for considering this evidence and taking action on behalf of all the agents and personnel who work in El Centro Sector. For convenience a copy of this report along with all the Appendixes will be emailed to CPA Gloria I. Chavez. If you have any questions pertaining to this proposal please feel free to contact me.

Respectfully,



Michael Matzke

President of AFGE NBPC Local 2554

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