



## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Sabine Neches Navigation District User Fee Notice

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The Water Resources Reform and Development Act (WRRDA) of 2014 authorizes a non-federal interest to levy port or harbor dues in the form of tonnage duties or fees in conjunction with a harbor navigation project whose usable increment of the project is complete to finance the cost, construction or maintenance of the project. The Sabine-Neches Navigation District (SNND) is a political subdivision of the State of Texas and the non-federal sponsor of the Sabine-Neches Waterway Channel Improvement Project (SNWW CIP). The SNND anticipates completion of the first usable increment of the SNWW CIP in early 2021. Upon completion of the first usable increment, SNND intends to levy port or harbor dues pursuant to 33 U.S.C. 2236. Notification in the Federal Register prior to an initial levy of port or harbor dues is required by the statute.

**DATES:** A public hearing on the proposed user fee ordinance will be held at 3:30pm on **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, in the manner and location specified in the Addresses section of this Notice.

The public comment period will end upon the close of business at 5 p.m. (CST), **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL**

**REGISTER].** Written comments must be received by the District on or before that date to be considered before the user fee ordinance becomes effective.

**ADDRESSES:** The public hearing will be held at 8180 Anchor Drive, Port Arthur, TX 77642. Pursuant to orders issued by the Governor of Texas related to combatting the spread of Covid-19, arrangements will be made for attendance at the public meeting by electronic means. Details regarding participation by electronic means will be posted on SNND's website: [www.navigationdistrict.org](http://www.navigationdistrict.org)

Public comments concerning the proposed users' fee ordinance should be directed in writing to Mr. Randall Reese, Executive Director and CEO Sabine-Neches Navigation District, 8180 Anchor Drive, Port Arthur, TX 77642, with a copy to Ms. Franchelle Nealy, Galveston District, U.S. Army Corps of Engineers, 2000 Fort Point Road, Galveston, TX 77550.

**FOR FURTHER INFORMATION CONTACT:** All comments and requests for further information on the proposal must be directed in writing to the Executive Director and CEO of SNND. His contact information follows: Mr. Randall Reese, Executive Director and CEO Sabine-Neches Navigation District, 8180 Anchor Drive, Port Arthur, TX 77642; Telephone: 409-729-4588; e-mail: [rreese@navigationdistrict.org](mailto:rreese@navigationdistrict.org). Alternatively, contact Ms. Franchelle Nealy, in writing at the Galveston District, U.S. Army Corps of Engineers, ATTN: Ms. Franchelle Nealy, 2000 Fort Point Road, Galveston, TX 77550; Telephone: 409-766-3817; and by e-mail at [franchelle.e.craft@usace.army.mil](mailto:franchelle.e.craft@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** The U.S. Army Corps of Engineers (USACE) Galveston District published the Final Feasibility Report/Final Environmental Impact Statement for SNWW CIP (USACE, 2011) in March 2011, the Chief of Engineers Report (Chief's Report) was signed in July 2011, and the Record of Decision was

signed in February 2012. The Congressional approval of the construction of the SNWW CIP (authorization for construction) was provided in Section 7002(1)1 of the Water Resources Reform and Development Act (WRRDA) of 2014, P.L. 113-121. The SNWW CIP's new start construction was funded in Fiscal Year (FY) 2019 by the Army Civil Works Program FY 2019 Work Plan. The SNND and the USACE signed the Project Partnership Agreement for SNWW CIP on or about July 27, 2019. Additional funding for construction of the SNWW CIP was provided in the FY 2020 Work Plan.

Construction of the first usable increment of SNWW CIP, an anchorage basin, has begun. Upon completion of this anchorage basin, SNND intends to begin to levy port or harbor dues pursuant to 33 U.S.C. 2236. 33 U.S.C. 2236(a)(5)(A) requires that SNND, as the non-federal sponsor, transmit to the Secretary of the Army for public notice the proposed ordinance before the initial levy of port or harbor dues. A previous notice was published on June 23, 2020 (85 FR 37634) with a draft user fee ordinance for public comment on which several comments were received. The comments resulted in the SNND modifying the proposed levy of port or harbor dues. The revised proposed levy is stated below for public comment.

Proposed Ordinance:

**SABINE NECHES NAVIGATION DISTRICT USER FEE ORDINANCE. AN  
ORDINANCE SETTING OUT THE NEED FOR AND LEVYING OF A USER  
SERVICE FEE ON VESSELS AND OWNERS OF CARGO, PLACING  
RESPONSIBILITY FOR PROVIDING REQUIRED DOCUMENTATION AND  
PROVIDING PENALTIES.**

Whereas the Sabine Neches Navigation District ("Navigation District") is the designated non-federal sponsor ("sponsor") for the Sabine Neches Waterway Channel Improvement Project for the Sabine Neches Waterway authorized in the Water Resources Reform and Development Act of 2014 ("Project"); and

Whereas the Texas Legislature implemented Senate Bill 1137 authorizing the Navigation District to serve as the sponsor for the Project and perform all necessary duties as the sponsor to satisfy its obligations as the local sponsor; and

Whereas the Project is projected to generate an additional \$57 billion in gross product and 465,000 US jobs; and

Whereas the Navigation District will be responsible for funding its required cost share of the total Project as set out in the Project Partnership Agreement between the United States Army Corps of Engineers and the Navigation District, including payment of the Navigation District's 40 percent share of the construction cost; and

Whereas 33 U.S.C. 2236 authorizes a non-federal interest to levy port or harbor dues on vessels and the owner of the cargo in the form of tonnage duties or fees in conjunction with a port or harbor navigation project whose usable increment of the project is complete to finance the cost, construction or maintenance of the Project; and

Whereas the first usable increment of the Project, a new anchorage basin, located on the Neches River and referenced in section VI page 16 of the March 11, 2011, Final Feasibility has been completed and benefits all vessels whose design draft exceed 20 feet; and

Whereas the levy of port or harbor dues authorized by 33 U.S.C. 2236 may be applied to all vessels comparable in size to those vessels used to justify the completed construction of a usable increment of the Project; and

Whereas the Board of Commissioners of the Navigation District has considered matters such as elapsed time of passage, safety of passengers and cargo, vessel economy of scale, under keel clearance, vessel draft, vessel squat, speed, sinkage and the cost of construction, operations, the value of the services of the vessel and cargo; and

Whereas all vessels comparable in size to those vessels used to justify the completed construction of the useable increment anchorage basin benefit from the anchorage basin as a usable increment of the Project, a User Fee as set out below reflects the benefits provided by the Project to vessels whose design draft exceeds 20 feet.

**NOW BE IT ORDAINED BY THE NAVIGATION AND CANAL COMMISSIONERS OF THE SABINE NECHES NAVIGATION DISTRICT:**

**Authority and Jurisdiction:**

The geographical boundaries of the Navigation District include an area that is co-extensive with Jefferson County, Texas, and the Navigation District exercises jurisdiction over the adjacent waterways, the nonpublic terminals and all vessels using the Sabine Neches Waterway Channel ("Waterway").

The Navigation District has the power and authority to regulate and fix charges for the use of the Waterway. The Navigation District is authorized to make and enforce rules and regulations to facilitate navigation and commerce, to every User. All vessels whose design draft exceeds 20 feet using the Waterway shall conform to this User Fee Ordinance ("Ordinance"), which establishes a user fee for the financing of the improvement Project ("User Fee"). All Users of the Waterway, by their use, consent to be bound by this Ordinance including these rules and regulations as they exist or may be amended from time to time.

The Board of Commissioners of the Sabine Neches Navigation District is authorized by Article 16, Section 59, of the Constitution of the State of Texas, Chapter 60 of the Texas Water Code, and the Acts of the 83rd Legislature Regular Session HB 1137 to act as the local sponsor for the Project.

Refusal or failure to comply with these rules and regulations may result in any action deemed appropriate or advisable by the Navigation District in

consultation with the United States Coast Guard Captain of the Port of Port Arthur and other relevant authorities, if any. The Navigation District may employ all legal means within its power to impose penalties and collect fees including the use and recovery of liens as permitted by 33 U.S.C. 2236.

**General Application:**

The use of the Sabine Neches Waterway constitutes an acceptance by the User of all charges, rules, and regulations published in this Ordinance. The charges, rules, and regulations published in this Ordinance apply on all cargo moving to and from terminals on the Waterway in vessels with a design draft exceeding 20 feet and shall apply to cargos transferred at all facilities and terminals on the Waterway.

**Waterway User Fee:**

A User Fee will be assessed against vessels whose design draft exceeds 20 feet and owners of all cargos transiting on vessels whose design draft exceeds 20 feet and loading or discharging at terminals or facilities on the Sabine Neches Waterway, beginning on a date 15 calendar days after final approval of this Ordinance by the Board of Commissioners of the Navigation District. The purpose of the User Fee is to finance construction costs associated with the Project. Although the User Fee is assessed against both subject vessels carrying the cargo and the owner of the cargo carried by subject vessels, the User Fee will be collected only once on each cargo loaded or unloaded onto a subject vessel but may be collected from either the subject vessel or the cargo owner. To avoid any confusion, "subject vessel" means a vessel whose design draft exceeds 20 feet.

The User Fee authorized by this resolution does not apply to (i) vessels owned, chartered, or operated by the United States Government, a foreign country, a

state, or a political subdivision of a country or State, unless engaged in commercial services; (ii) vessels engaged in towing, dredging or channel maintenance activities, (iii) vessels engaged in intra-port movements; or (iv) vessels with design drafts of 20 feet or less.

For purposes of this Ordinance, "hydrocarbon" means oil, gas, ethanol, methanol, a commodity or thing made or manufactured-in whole or part-from oil or gas, and derivatives or by-products or fractions of oil or gas all regardless of their physical form and including mixtures of any or all of the above.

The User Fee authorized by this ordinance will expire on January 1, 2049, or upon final payment of all construction and construction financing costs associated with the Project, whichever occurs first.

The User Fee is assessed for services including, but not limited to, meeting the financial responsibility of acting as the local sponsor for the Project.

The User Fee will be assessed as a tonnage fee on cargo loaded or discharged through a terminal. The User Fee will be assessed as follows:

**Hydrocarbon Cargo:**

The Initial User Fee on hydrocarbon cargo is set forth below and will be identical to the schedule to be filed with the Secretary of the Treasury and the Federal Maritime Commission. The amount of the User Fee will be reviewed by the Navigation District at 12-month intervals and adjusted up, down or remain unchanged as required by the construction cost financing requirements of the Project, provided that the User Fee will not exceed the Maximum User Fee set forth below. If any change is made to the User Fee a new schedule will be filed with the Secretary of the Treasury and the

Federal Maritime Commission indicating the new User Fee rate and the effective date of the rate change:

Break-bulk: Initial \$0.20 per short ton; Maximum \$0.35 per short ton.

Bulk: Initial \$0.20 per short ton; Maximum \$0.35 per short ton.

Liquid Bulk: Initial \$0.20 per short ton; Maximum \$0.35 per short ton.

### **Non-Hydrocarbon Cargo:**

The Initial User Fee on non-hydrocarbon cargo is set forth below and will be identical to the schedule to be filed with the Secretary of the Treasury and the Federal Maritime Commission. The amount of the User Fee will be reviewed by the Navigation District at 12-month intervals and adjusted up, down or remain unchanged as required by the construction cost financing requirements of the Project, provided that the User Fee will not exceed the Maximum User Fee set forth below. If any change is made to the User Fee a new schedule will be filed with the Secretary of the Treasury and the Federal Maritime Commission indicating the new User Fee rate and the effective date of the rate change:

Break-bulk: Initial \$0.02 per short ton; Maximum \$0.035 per short ton.

Bulk: Initial \$0.02 per short ton; Maximum \$0.035 per short ton.

Liquid Bulk: Initial \$0.02 per short ton; Maximum \$0.035 per short ton.

### **Provision of Records:**

The Navigation District will designate an officer or authorized representative to receive tonnage certificates and cargo manifests from vessels which may be subject to the levy of port or harbor dues, export declarations from terminal operators, and such other documents as the non-Federal interest may by law,

regulation, or ordinance require for the imposition, computation, and collection of port or harbor dues. Terminal operators having custody of any cargo to be loaded on board a vessel while the vessel is on the Waterway shall, within forty-eight hours before departure of that vessel, deliver to the appropriate appointed authorized representative an export declaration specifying the cargo to be loaded on board each such vessel. Upon the arrival of a vessel on the Waterway, which the vessel may be subject to the levy of port or harbor dues under this Ordinance, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate appointed authorized representative a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect. The Navigation District may enter into memoranda of understanding with terminal operators or others individually or collectively to facilitate the efficacious provision of records and to modify these requirements as deemed appropriate by the Navigation District.

**Responsibility for Payment of User Fee:**

The vessel and owner of the cargo are each jointly responsible for payment of the entire User Fee to a representative authorized and designated by the Navigation District. Subject to procedures memorialized in memoranda of understanding, if applicable, invoices for payment of the User Fee will be delivered to vessels and cargo owners from whom User Fees are due or delivered to their respective agents. Those invoices will contain payment instructions. The Navigation District will not make any duplicate collection of the User Fee.

**Payment Procedure:**

On the 15th of the month following transfer of the cargo either to or from a terminal on the Waterway, the terminal involved will forward to the Navigation

District any funds paid to the terminal by the vessel or the owner of the cargo toward the User Fees upon cargo that crossed the terminal's dock for the preceding month, along with a verified statement of the amount owed for the incurred User Fees for the preceding month. Any vessel or cargo owner who fails to pay the full User Fee shall be identified on the monthly verified statement. This verified statement will be submitted to the Navigation District on a form promulgated by the Navigation District and the accuracy of the information provided on the form shall be certified under penalties of perjury.

Terminals shall keep records of the amounts owed and paid for the User Fee for a period of three years and make them available for audit by the Navigation District. The data and fees paid are subject to audit by the Navigation District or other authorities and the terminal will cooperate with the Navigation District's audit.

All users and owners of private facilities and terminals shall be required to permit Navigation District representatives reasonable access to manifests of cargo, receiving reports and all other documents necessary to audit and ascertain the correctness of User Fees remitted or to be collected.

The procedures outlined in the foregoing Provision of Records and Payment Procedure sections of the Ordinance may be modified by the terms of a Memorandum of Understanding ("MOU") between an individual terminal operator and the Navigation District. In such case, the terms of the MOU shall control the obligations of the terminal operator under the Provisions of Records and Payment Procedure sections of this Ordinance.

**Finance Charge:**

All fees are due and payable upon the 15th of the month following the use of the Waterway. Any User Fee incurred, which is unpaid thirty (30) days from that date, shall be deemed to be delinquent.

Any amount that is unpaid on or after thirty (30) days from the date due will be assessed an interest charge of twelve percent (12%) per annum of the amount of the fee due, and shall be due and owing from the date of delinquency until paid. Such interest charges shall be calculated on a per annum basis of three hundred sixty-five (365) days.

**Venue and Attorney Fees:**

Additionally, should it become necessary for the Navigation District to file suit to collect any delinquent User Fees or to enforce any provision of this Ordinance, the party obligated herein to pay such User Fees under this section or the party against whom enforcement of the User Fee is sought consents to such suit being filed in the appropriate Federal District Court in Jefferson County, Texas. The Navigation District shall be entitled to seek all relief permitted by 33 U.S.C. 2236.

**Severability**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**Notice:**

Pursuant to §60.075(c) of the Texas Water Code, a descriptive caption stating the purpose of this Ordinance and penalty for its violation will be published for a ten (10) day period following the passage in every issue of the Beaumont Enterprise, a newspaper of general circulation in the Navigation District.

This User Fee Ordinance was passed at a Regular Meeting of the Commissioners of the Sabine Neches Navigation District.

**Vance F. Stewart, III,**

*Senior Official Performing the Duties of the  
Assistant Secretary of the Army (Civil Works).*

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