

## Background

The satellite carrier compulsory license establishes a statutory copyright licensing scheme for satellite carriers that retransmit television broadcast signals to satellite dish owners for their private home viewing. 17 U.S.C. 119. Congress created the license in 1988 with the passage of the Satellite Home Viewer Act of 1988. Congress reauthorized the satellite license for additional five-year periods in 1994 and 1999, and the license was slated to expire on December 31, 2004. However, Congress again reauthorized the satellite license for another five years with the passage of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("the 2004 Act") (as part of the Consolidated Appropriations Act, 2005), Pub. L. 108-447, which was signed into law by the President on December 8, 2004.

Satellite carriers pay royalties based on a flat, per-subscriber, per-month fee. These rates were initially set by Congress in the Satellite Home Viewer Act of 1988 and then later adjusted by a three-person arbitration panel convened by the former Copyright Royalty Tribunal. 57 FR 19052 (May 1, 1992). When the license was reauthorized in 1994, Congress directed that the rates be adjusted by the Librarian of Congress using the system that replaced the Copyright Royalty Tribunal, namely, *ad hoc* Copyright Arbitration Royalty Panels ("CARPs") administered by the Librarian of Congress and the Copyright Office. Accordingly, the Librarian adjusted the rates in 1997. 62 FR 55742 (October 28, 1997). In the Satellite Home Viewer Improvement Act of 1999, which reauthorized the license for an additional five years, Congress reduced the rates set by the Librarian.

The 2004 Act adopts the rates as reduced by Congress in 1999 but calls for the amendment of those rates to be paid by satellite carriers for the secondary transmission of the primary analog transmission of network stations and superstations. This notice begins the process mandated by the statute.

## Voluntary Negotiation Period

Sections 119(c)(1)(B) of the Copyright Act, 17 U.S.C., provides that "[o]n or before January 2, 2005, the Librarian of Congress shall cause to be published in the **Federal Register** [notice] of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers \* \* \* under subsection (b)(1)(B)." This notice initiates the voluntary negotiation period.

The statute provides that "[w]ithin 10 days after publication in the **Federal Register** of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding." 17 U.S.C. 119(c)(1)(D)(ii)(I). In accordance with this provision, the voluntary negotiation period commences today, December 30, 2004, and concludes January 10, 2005.

If a voluntary agreement is reached by the end of the negotiation period, the parties can request that the Librarian publish the agreement for notice and comment in accordance with section 119(c)(1)(D)(ii)(II) and adopt the rates in the voluntary agreement if no objections are received from a party with a significant interest and an intention to participate in an arbitration proceeding. 17 U.S.C. 119(c)(1)(D)(ii)(III). If an objection to the voluntary agreement is received or if parties are unable to reach a voluntary agreement, the statute dictates that the rates be determined under the current CARP system.<sup>1</sup> Therefore, if a CARP proceeding becomes necessary, the Library must apply the rules and regulations of 37 CFR part 251. Consequently, should the parties be unable to reach a voluntary agreement by the end of the voluntary negotiation period or should a party with a significant interest and an intention to participate in an arbitration proceeding file an objection to the agreement, the Library will publish a subsequent notice calling for the filing of Notices of Intent to Participate.

Dated: December 27, 2004.

**David O. Carson,**

*General Counsel.*

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## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

### United States Section; Notice of Availability (NOA) of the Draft Supplemental Environmental Impact Statement (DSEIS) for Clean Water Act (CWA) Compliance at the South Bay International Wastewater Treatment Plant (SBIWTP), San Diego, California

**AGENCY:** United States Section, International Boundary and Water Commission (USIBWC).

**ACTION:** Notice of Availability.

**SUMMARY:** This announces the availability of the DSEIS that assesses the potential environmental impacts of the construction and operation of a range of treatment and disposal alternatives for the SBIWTP to achieve compliance with the CWA. Situated in the United States at the United States/Mexico border, the SBIWTP treats sewage flows originating from the City of Tijuana, Mexico and the surrounding region and discharges into the Pacific Ocean through an ocean outfall. The DSEIS considers existing and new alternatives that would enable the USIBWC to bring the SBIWTP into compliance with the CWA and the requirements contained in its National Pollutant Discharge Elimination System (NPDES) permit and to evaluate new information on the current discharges of advanced primary effluent from the SBIWTP through the South Bay Ocean Outfall (SBOO), as well as interim actions that would continue operations of the SBIWTP until the SBIWTP achieves CWA compliance. The United States Environmental Protection Agency (USEPA), Region 9, San Francisco, California, is a Cooperating Agency for this action.

**DATES:** Written comments are requested by February 28, 2005. The public comment period of the DSEIS will end 60 days after publication of the NOA in the **Federal Register**.

**Public Hearing:** A public hearing regarding the findings of the DSEIS and to take comments on the DSEIS will be held at 6:30 pm on Wednesday, February 2, 2005 at the San Ysidro Middle School (Auditorium), 4345 Otay Mesa Road, San Diego.

**ADDRESSES:** Written comments (no e-mails or faxes) must be addressed to: Mr. Daniel Borunda, Environmental Protection Specialist, Compliance Section, USIBWC, 4171 North Mesa Street, C-100, El Paso, Texas 79902. A copy of the DSEIS is available at <http://www.ibwc.state.gov> and in local public libraries in the San Diego area. A

<sup>1</sup> On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Act of 2004, Pub. L. 108-419, which eliminates the CARP system and replaces it with three permanent Copyright Royalty Judges. However, the 2004 Act calls for satellite royalty rates to be determined "under chapter 8 as in effect on the day before the date of enactment of the Copyright Royalty and Distribution Act of 2004." 17 U.S.C. 119(c)(1)(F).

limited number of copies will be available, if you wish to obtain a copy contact Mr. Daniel Borunda at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Borunda, Environmental Protection Specialist, USIBWC, at (915) 832-4701, by fax at (915) 832-4167, or by mail at the above listed address.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the USIBWC has analyzed the impacts of alternatives for SBIWTP to achieve compliance with the CWA and its NPDES permit. This action is needed because the SBIWTP currently operates and discharges only at the advanced primary level and cannot meet all the requirements of the CWA and its NPDES permit, including secondary treatment requirements.

This DSEIS also evaluates new information on the current discharges of advanced primary effluent from the SBIWTP through the SBOO, as well as treatment and disposal options in Mexico to achieve CWA compliance.

The No Action Alternative and six action alternatives are evaluated in the DSEIS. The alternatives were developed in a manner that would enable wastewater flows to be treated in compliance with the CWA and the SBIWTP NPDES permit. Alternatives formulation was the result of a public consultation process that included the public, regulatory agencies and environmental organizations.

This DSEIS evaluates the following seven alternatives:

1. *Alternative 1:* No Action (Continue operation of SBIWTP as Advanced Primary Facility).

- Option A: With No Future Improvements to Mexico's Existing Conveyance Facilities

- Option B: With Future Improvements to Mexico's Existing Conveyance Facilities

2. *Alternative 2:* Operate SBIWTP as Advanced Primary Facility With Treated Flows Conveyed to Mexico for Discharge.

3. *Alternative 3:* Operate SBIWTP With City of San Diego Connections (Interim Alternative Only).

4. *Alternative 4:* Implementation of Public Law 106B457, Secondary Treatment Facility in Mexico.

- Treatment Option A: Operation of SBIWTP as Advanced Primary Facility, Secondary Treatment in Mexico

- Treatment Option B: Cease Operation of SBIWTP, Secondary Treatment in Mexico

- Treatment Option C: Bajagua LLC, Proposal—Operation of SBIWTP as

Advanced Primary Facility, Secondary Treatment in Mexico

- Discharge Option I: Treated Effluent Discharged in United States via SBOO

- Discharge Option II: Treated Effluent Discharged in Mexico at Punta Bandera

5. *Alternative 5:* Secondary Treatment in the United States at SBIWTP.

- Treatment Option A: Completely Mixed Aeration (CMA) Ponds at SBIWTP

- Treatment Options B-1 and B-2: Activated Sludge Secondary Treatment at SBIWTP

6. *Alternative 6:* Secondary Treatment in the U.S. and in Mexico.

7. *Alternative 7:* SBIWTP Closure/Shutdown.

The USIBWC has identified Alternative 4, Treatment Option C as the preferred alternative in the DSEIS. The USIBWC will consider comments on the DSEIS to make a final selection of the preferred alternative.

## Background

The original Draft EIS for the SBIWTP project (1991) proposed the construction of a secondary treatment facility in San Diego to achieve secondary treatment using an activated sludge technology. Based on a 1994 Final EIS and Record of Decision (ROD), the USIBWC and the USEPA approved the construction of the SBIWTP and the connecting SBOO. The SBIWTP is on a 75-acre site in south San Diego County, California, just west of San Ysidro near the intersection of Dairy Mart and Monument roads. Treated effluent is discharged to the Pacific Ocean through the SBOO, a 4.5-mile long piping system completed in January 1999. This outfall extends about 3.5 miles offshore.

Pursuant to the completion of an Interim Operations Supplemental EIS in 1996, the USIBWC and USEPA decided to operate the SBIWTP as an advanced primary treatment facility before completion of the necessary secondary facilities. This decision would expedite the treatment of up to 25 mgd of untreated sewage from Tijuana that would otherwise have continued to pollute the Tijuana River and Estuary, as well as coastal waters in the United States.

Before the SBOO was completed in January 1999, advanced primary treated effluent was discharged through an emergency connection to the City of San Diego Point Loma Wastewater Treatment Plant. The emergency connection was used daily in the late 1980s and 1990s, but it has not been used in this manner since the SBIWTP started discharging to the completed SBOO in January 1999.

After the release of the May 1994 Final EIS and ROD and the 1996 decision regarding interim operation, significant additional information became available and changed circumstances warranted reconsidering the best means to complete the SBIWTP secondary treatment facilities. The USIBWC and USEPA decided to prepare a Supplemental EIS to examine new information as a settlement to a lawsuit that challenged the 1994 Final EIS.

In January 1998, the USIBWC and the USEPA issued the Draft Long Term Treatment Options Supplemental EIS to re-evaluate the SBIWTP secondary treatment options. In October 1998, the agencies issued a supplement to the 1996 Interim Operation Supplemental EIS that addressed impacts of the advanced primary treatment. This supplement disclosed new information about the presence of dioxins and acute toxicity in the advanced primary discharge. This new information was incorporated into the Final Long Term Treatment Options Supplemental EIS released in March 1999.

In the 1999 ROD for the Long Term Treatment Options Supplemental EIS, the USEPA and the USIBWC selected the CMA pond system at the Hofer property as the long-term option for secondary treating 25 mgd of wastewater at the SBIWTP. However, Congress did not fund the construction of these secondary treatment facilities and the plant has continued to provide advanced primary treatment only.

The specific purpose of the current analysis is to determine the environmental impacts of the alternatives that could accomplish compliance with the CWA and the SBIWTP NPDES permit. A decision on which of the alternatives will be implemented in order to achieve compliance with the CWA will be made by the USIBWC through a process that will consider a wide range of factors. The factors include, but are not limited to, environmental considerations, laws and regulations, implications for compliance with the CWA, the SBIWTP NPDES permit, budget considerations, schedule and public concerns.

A copy of the DSEIS has been filed with the USEPA in accordance with 40 CFR parts 1500-1508 and USIBWC procedures. Written comments concerning the DSEIS will be accepted at the address above until February 28, 2005.

Dated: December 21, 2004.

**Susan E. Daniel,**  
General Counsel.

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