



TO: Rebecca Long
FROM: Eric Sapirstein
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SUBJECT: Washington Update

Congress returned to work, kicking off the second and final session of the 118th Congress. Most of Congress' attention focused on legislative hearings on the Water Resources Development Act of 2024, cybersecurity, and the water sector, and finalizing fiscal year 2024 spending bills to avoid a shut-down or a year-long Continuing Resolution in March.

- ***Fiscal Year 2024 Appropriations Back On Track***

On January 18, the Senate passed a continuing resolution (CR) (H.R. 2872) funding four appropriations bills through March 1 and the remaining eight appropriations bills through March 8. The agreement became the first concrete advancement in a process to finalize Fiscal Year (FY) 2024 spending before the Fiscal Responsibility Act's (FRA), mandates are triggered in April. These mandates would require a full-year CR, along with an across-the-board spending cut of one percent. The spending reduction would actually be larger, perhaps as much as ten percent. This is because federal agencies have obligated higher spending under the existing Continuing Resolution, compared to the prescribed FY 24 levels dictated under FRA. This means increased cuts would be necessary to account for the higher spending levels of the past several months. If FRA reductions are triggered, the Office of Management and Budget would decide which programs to cut. These decisions would be transmitted to Congress as a "Sequester" that Congress could override. But an override would be unlikely.

In a promising sign, the House and Senate Committees on Appropriations reached agreement on FY 24 spending allocations (302b). These 302 b's establish spending levels for each subcommittee that draft spending bills. The agreement is important because final congressional spending negotiations can now proceed that depart on a common spending baseline. In a promising sign that negotiations may avoid becoming bogged down over spending levels, congressional appropriators have signaled that while some spending reductions are likely, most programs should remain funded at FY 2023 spending levels.

Given the limited time between today and March 1, when the first stopgap spending deadline is triggered, another stopgap measure may be necessary to allow Congress time to finalize an overall spending agreement. Speculation centers on a limited extension, perhaps until the end of March.

- ***Senate PFAS Legislation Remains Stalled***

The Senate Committee on Environment and Public Works staff continue to work to develop Per- and polyfluoroalkyl substances (PFAS) treatment and clean-up legislation. At this writing, committee staff remain committed to develop legislation. However, as has been the constant in the debate, designing liability protection for passive receivers, including water agencies, remains an obstacle to reaching an overall agreement that can garner bipartisan support. Continued strong and unyielding opposition to any compromise on liability protections from the environmental community has blocked efforts to develop consensus language that would protect water agencies from potential liability under the law.

- **PFAS Liability and Frivolous Litigation Remains a Top Priority for OC San**

OC San's priority to ensure it is not subject to unwarranted Superfund PFAS liability or frivolous litigation remains a priority for many committee members. This includes all Republican members. It now seems increasingly likely that resolution of potential liability protection language will be delayed until the Lame Duck Session later this fall. At the same time, should the United States Environmental Protection Agency (USEPA) issue a final rule to designate PFAS chemicals as hazardous substances, it would likely trigger immediate litigation that the agency overstepped its Superfund authority and failed to consider public input in drafting the rule. Any final rule would likely serve to prompt passive receiver stakeholders to demand that Congress take action. This might include language delaying the designation rule implementation through a rider in a USEPA spending bill for USEPA or employ its Congressional Review Act authority to veto the rulemaking. The current situation means that the ongoing advocacy to protect wastewater agencies will need to be maintained for the coming months leading into the fall.

- ***U.S. Environmental Protection Agency Regulatory Agenda and PFAS***
USEPA continues to move forward on its PFAS rulemakings. As reported last month, the agency intends to issue rules impacting water treatment and PFAS designation of PFAS under Superfund. Of specific note is the just released USEPA decision to finalize testing protocols (1633 and 1621) for PFAS. The updated protocols must be published in the Federal Register but represent another step in the priority to require the use of the Clean Water Act's authorities to identify the PFAS family of chemicals in wastewaters and biosolids upon which future agency mandates and rule actions may be initiated.

EPA is expected to now issue final rules:

- PFAS drinking water maximum contaminant level (MCL) of 4 PPT in February.
 - Designate PFAS as a hazardous substance under Comprehensive Environmental Response, Compensation, and Liability Act in March 2024 (rule currently at Office of Management and Budget for final approval).
- ***Importance of USEPA Schedule***
As noted in the above review of PFAS legislative developments, if USEPA issues a final rule on the designation of PFAS chemicals under Superfund, it could serve as a catalyst for stakeholders to seek congressional action to review and revoke the rule under the Congressional Review Act. Regardless, we expect that litigation would be initiated challenging the rulemaking.
 - ***Low Income Household Water Assistance Program***
Efforts to address low-income ratepayers' water and wastewater service needs are expected to be addressed in the coming weeks when Senator Alex Padilla is expected to introduce his Low-Income Household Water Assistance Program Establishment Act (LIHWAP). The bill would authorize a permanent ratepayer assistance program. This would be similar to the current low-income heating and energy assistance program. Each state would receive a block grant of assistance. If enacted, the bill would be established within the Department of Health and Human Services. Once USEPA implements a pilot program authorized under prior legislation, the program would be transferred to the agency for long-term management. The bill does not include an authorization for the program. The soon to be introduced legislation would not directly impact OC San. However, it could support member agencies and the County of Orange that could provide relief if appropriate.