



TO: Rebecca Long

FROM: Eric Sapirstein

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SUBJECT: Washington Update

Congress recessed for its traditional summer break that allows Members to meet with constituents, prior to its return work after September 12. Leading up to the recess, Congress approved, and the president swiftly signed into law, a budget reconciliation package that addresses western water, clean energy, wildfire, health care and corporate tax matters. The package includes \$4 billion to address western water drought conditions with a focus on the Colorado River Basin States. This funding would support land fallowing and conservation efforts such as water recycling. The funding is supplemental to the substantial funding provided through the infrastructure law. This should allow for additional drought assistance to be provided for California projects.

Looking forward, congressional action in September will likely be limited as the House is only in session for 10 days, before it recesses in October for the mid-term elections. Central to the September agenda will be passage of a continuing resolution to maintain governmental operations beyond October 1. This means that the Lamé Duck Session will focus on finalizing the fiscal year 2023 spending bills along with a few outstanding issues. The following summarizes the issues of interest to OC San that we anticipate the Lamé Duck Session will consider.

- ***Fiscal Year 2023 Appropriations and Community Projects***

As has become customary since 1992, Congress will not meet the fiscal year deadline of October 1 to fund federal programs. Instead, the top order of business in September will be passage of a stopgap spending bill. The only question is whether the measure will extend current year spending through December or extend into next year. The decision will likely hinge on which party controls the House and Senate after the elections. The House passed its United States Environmental Protection Agency (USEPA) spending bill as part of a minibus spending bill. It is pending in the

Senate. The Senate, divided 50-50, was unable to reach an agreement on spending levels for fiscal year 2023 spending bills and therefore has not taken committee actions to approve spending bills. This means that any negotiations on final spending bills will be based upon the House-passed bills.

The appropriations process as currently structured is to OC San's benefit. As reported previously, Representative Correa successfully supported the demonstration of OC San's PFAS destruction technology, securing \$3.4 million through USEPA's water program to support the demonstration. Assuming final passage of the agency's budget, prospects are positive that this Community Project request will be enacted.

In other funding priorities, the House spending bill encourages USEPA to continue progress in the development PFAS policy and rules related to effluent limitation guidelines, designation of PFAS as hazardous substances, reviewing biosolids risks, and enhancement of research into treatment technologies. On a more general basis, the Clean Water State Revolving Loan Fund Program would receive almost \$2 billion of which 7.2333 percent would be allocated to California. This would be in addition to the approximately hundreds of millions of dollars California will receive through the infrastructure law.

- ***Build America/Buy America (BABA) Waivers Taking Shape***
USEPA continues to develop guidance on BABA implementation and the availability of waivers from the mandate. The agency has agreed to exempt any project that has submitted final designs and specs to a State Revolving Fund (SRF) agency. It has also established that it will delay compliance with the mandate for six months for projects outside of the SRF program; like those funded through grants. The agency has reportedly decided to defer on how it intends to address the requirement that domestic content of manufactured products must contain at least 55 percent U.S. made content. Instead, it will await an Office of Management and Budget guidance document that will apply to the entire federal government's implementation of the mandate. At this writing, assuming that OC San's Community Project assistance request is enacted, the assumption should be that the technology holder should validate that its technology will meet a blanket 55 percent domestic content threshold or develop a formal waiver application relying upon the broad general waiver in the public interest.
- ***PFAS and Clean Water Agencies***
USEPA is working to meet the deadlines contained in its PFAS Roadmap to impose standards for the control of PFAS entering the environment. For OC San, the most serious policymaking matter is designating PFAS as hazardous under Superfund.

On August 12, the Office of Management and Budget finalized its review of USEPA's proposed rulemaking to list PFAS as hazardous. This means that a proposed rule is likely to be published within the next ninety days. Once issued, a public comment period would be triggered. Under any scenario, it seems highly unlikely that any final rule would become effective before 2024. Other key actions involve developing a new risk assessment model to ascertain whether biosolids create an unacceptable risk to public health and the environment, issuing final effluent limitation guidelines for industries, and encouraging states to incorporate PFAS monitoring into National Pollutant Discharge Elimination System (NPDES) permits. Outside of water quality, the agency is on a clear path to issue drinking water standards based upon the stringent Health Advisories it published several weeks ago for PFAS and GenX chemicals.

- ***Omnibus Water and Public Lands Legislation***

Prior to recessing for August, the House passed H.R. 5118, a bill that incorporates more than forty bills. H.R. 5118 would provide authorizations to support construction of water recycling and desalination projects, implement ecosystem restoration projects, increase funding of watershed projects to protect against wildfire threats and other resiliency needs, and deliver additional grants assistance for underserved and disadvantaged communities' drinking water infrastructure needs. The bill is important because it offers the prospect of becoming an omnibus drought and water resources bill to address these issues and other matters that could support resiliency projects.

To this end, the Senate has a number of bills pending that could become a Senate effort. Two bills sponsored by Senators Feinstein and Padilla are notable. First, Senator Feinstein's STREAM Act (S. 4231) would renew expiring provisions of the WIIN Act to deliver hundreds of millions of dollars to support water recycling, desalination, and storage projects. Senator Padilla's Water Efficiency, Conservation, and Sustainability Act of 2022 (S. 4279) would support the adoption of technologies to reduce water use and improve energy efficiency. S. 4279 includes authorizations of \$25 million per year over five years that could support assistance to ratepayers to adopt such technologies through assistance provided to utilities.