



TO: Orange County Sanitation District

FROM: Eric Sapirstein

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SUBJECT: Washington Update

Congress returned from its Christmas recess and convened the second and final session of the 119th Congress on January 4. In quick order, the House and Senate approved a second “minibus” spending bill, and the president has stated he will sign the bill. The measure, known as the Consolidated Appropriations bill funds core water programs for the remainder of fiscal year (FY) 2026 and avoids a potential shutdown of the U.S. Environmental Protection Agency (USEPA) on January 30 when the current stopgap spending bill expires. Meanwhile, the Administration continues implementing PFAS policies and preparing to defend in court its designation of PFAS as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as well as the drinking water standard of 4 parts per trillion. Most notably, is USEPA’s review of the draft risk assessment model for biosolids land application and California water supply. The following summarizes these issues.

Efforts to Develop Minibus Spending Bill on Track for January Passage

USEPA funding was reduced by 4 percent. The reduction is significantly lower compared with the Administration requested 23 percent cut. Under the agreement, the State Revolving Loan Fund (SRF) would receive \$2.7 billion. The USEPA had requested \$350 million and the agreed upon funding is effectively current year funding levels. The Water Infrastructure Finance Innovation Act (WIFIA), the low interest loan program, would be funded at \$72 million an approximately \$10 million reduction. Most other agency programs are set at FY 2025 levels that represent levels contained in the final Biden budget agreement.

The Energy and Water Development spending bill that funds the U.S. Bureau of Reclamation’s (USBR) budget was also included in the minibuss. USBR now has funding to continue implementation of water-related programs including water recycling and management of the federal water supply project (Central Valley Project) that delivers water to Southern California. This includes explicit directives

to support authorized water storage projects. Bay Delta program activities will also continue. This program receives a directed \$32 million.

PFAS Directives Contained in Spending Bills

The USEPA spending bill included directives to the Agency to continue research into PFAS threats, as well as encouraging data collection to support improved PFAS biosolids regulation. Regarding regulation of PFAS and biosolids, the bill urges the agency to pursue research in collaboration with U.S. Department of Agriculture to ensure soil safety where biosolids land application is in use.

It is important to note that when the Continuing Resolution was enacted last year, it included a final budget for the U.S. Department of Agriculture. As part of the spending bill, the Department is directed to continue monitoring lands impacted by PFAS. Also, they are directed to establish a PFAS Center of Excellence to examine PFAS issues of concern regarding agriculture and provide financial assistance to address PFAS economic impacts on farming operations. There were no directives to limit biosolids land application practices.

Clean Water Act Reauthorization and Permit Reforms

Efforts to address the renewal of the Clean Water Act's SRF program and other expired provisions were expected to be marked up and move forward in the House Committee on Transportation & Infrastructure last year. However, several policy disagreements, including allowing private entities to access the clean water SRF and funding authorization levels for the SRF and WIFIA assistance programs, delayed committee action. We anticipate that the committee will consider the bill in the coming weeks.

National Pollutant Discharge Elimination System (NPDES) permit reforms gained traction in the House. After several delays, the House passed the PERMIT Act (H.R. 3898), prior to recessing for the year. H.R. 3898 passage is important because it would direct USEPA and delegated states to issue ten-year NPDES permits to public agencies and businesses. This provision is different from prior legislative approaches that would have provided states with discretionary authority to issue permits "up to ten years" instead of a mandatory ten-year term that is provided in H.R. 3898. H.R. 3898 is pending before the Senate Committee on Environment and Public Works. This committee is developing a broad energy and environment permit reform proposal that reportedly addresses providing extended NPDES permit terms. If the Senate committee approves its permit reform measure, prospects for a final House-Senate compromise would be highly likely to pass later this year. As of this writing, the committee has not announced when a Senate bill might be considered.

USEPA Issues Waters of the U.S. Rule

USEPA published a proposed revised Waters of the U.S. (WOTUS) rule to comply with the U.S. Supreme Court decision that struck down prior WOTUS rulemakings. As issued, the wastewater facility exemption from WOTUS would be expanded from its current ponds and lagoons application to the entire wastewater treatment facility system. Water recycling facilities and groundwater recharge would also benefit. The rule excludes these activities as jurisdictional waters under WOTUS. A handful of issues, which include the definition of “wet season”, lack of a WOTUS stormwater exemption, and how ephemeral streams are defined due to geographic differences throughout the nation, are likely to be addressed by the agency prior to publication of the final rule in the coming weeks. Irrespective of the rule’s final elements, it is likely to be litigated. However, for OC San, the proposal would provide greater clarity on the application of which waters would be jurisdictionally covered under the Clean Water Act, eliminating the potential for additional regulatory burdens to be imposed upon OC San activities.

‘Do Not Flush’ Labeling Legislation

The focus to advance “Do Not Flush” labeling legislation, that mirrors California’s labeling law, continues to be a bipartisan focus this congressional session. Last year, the Senate Committee on Commerce, Science and Transportation favorably amended and marked up the WIPPES Act, S. 1092. Since the amendments to S.1092 being technical and non-controversial in nature, the legislation maintained endorsement from the clean water sector, wipes industry, and environmental stakeholders. As a result, the focus this session will be to pass the amended S. 1092 out of the Senate, so that the differences between it and the House-passed WIPPES Act (H.R. 2269) can be reconciled to pass a final bill. Due to the legislation’s sustained bipartisan record in both the House and Senate, the likelihood of final passage remains optimistic.