



TO: Rebecca Long

FROM: Eric Sapirstein

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SUBJECT: Washington Update

Congress recessed for summer at the end of July, leaving a host of legislative issues to be considered when it returns in September. Before leaving, the House and Senate moved most fiscal year 2025 spending bills through their respective spending committees. The House passed a handful of spending bills, while the Senate failed to debate any of the pending bills. Outside of spending measures, action on the Water Resources Development Act occurred. Per- and polyfluoroalkyl substances (PFAS) liability legislation remained a pending matter before the House and Senate committees with jurisdiction over hazardous waste site clean-ups.

The following summarizes the status of federal policy matters of interest to OC San.

- ***Water Resources Development Act of 2024***

House and Senate efforts to reauthorize the Water Resources Development Act of 2024 (WRDA), H.R. 8812 and S. 4367, to renew the U.S. Army Corps of Engineer's (USACE) programs/projects took an important step when, on July 22 and July 25 the House and Senate respectively passed their version. H.R. 8812, which passed 318-19 and S. 4367, which passed unanimously. This means that WRDA is now poised for final passage later this fall once a House-Senate Conference Committee drafts a compromise bill. Both bills are limited in scope with a focus on authorizing USACE approved Chief's Reports, a series of Environmental Infrastructure projects, which include ecosystem restoration projects. Also, both bills would elevate water supply as a core USACE mission alongside navigation and flood protection. The House would make such elevation permanent. Conversely, the Senate would make water supply a priority only during times of drought.

Importance to OC San

WRDA would not directly impact OC San. However, the provisions that focus on drought resilience, if enacted, would help to make Orange County's water supply more robust with the ability to enhance water conservation at Prado Dam. A second indirect benefit for OC San are provisions to enhance forecasts of atmospheric rivers through the Forecast Informed Reservoir Operation (FIRO) program that relies upon advance meteorological capabilities. FIRO would improve water conservation and also provide a tool to better understand stormwater impacts that can result in surge events.

- ***PFAS Rulemakings and Liability Protection***

Federal PFAS policymaking continues to command congressional and stakeholder attention. Within the policymaking arena, Congress is using the annual appropriations process to address concerns from the water sector. The House Committee on Appropriations approved the U.S. Environmental Protection Agency (USEPA) Fiscal Year 2025 spending bill (H.R. 8998) and included PFAS related policy riders. First, the committee reaffirmed its Fiscal Year 2025 spending bill directives to the Government Accountability Office (GAO). The GAO was mandated to conduct a study into the economics underlying USEPA's decision to establish a drinking water standard (MCL) of four part per trillion. In the House Fiscal Year 2025 spending bill, the committee expanded the mandate, requiring GAO the USEPA to identify the number of drinking water agencies impacted by the rule and the costs of compliance. The House spending bill also requires that, within 90 days of enactment, the USEPA will provide a report to Congress on its progress for implementation of the PFAS Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) municipal discretionary enforcement policy. The USEPA asserts this policy will avoid enforcing against wastewater and drinking water agencies when CERCLA liability might be triggered at a clean-up site.

Aside from these liability and compliance issues, the spending bill provides USEPA with directives to maintain research into PFAS environmental and health impacts. and to support water agencies with technical assistance to comply with the MCL. Notably, the spending bill does not contain policy riders that would adversely impact land application of biosolids or new mandates on landfills that accept treatment residuals. The Department of Agriculture spending bill does include language directing the Department to continue to research impacts from PFAS on soils and to use existing resources to assist dairy farmers that are unable to sell milk due to PFAS impacts in the delivery of milk supplies.

The legislative effort to develop a water sector PFAS CERCLA liability exemption continues in the Senate Committee on Environment and Public Works. As reported previously, committee leadership is committed to develop a consensus approach before consideration of PFAS legislation. Consensus exists within the committee to support increased funding for health research and technology development to treat or destroy PFAS.

The challenge continues to be defining a passive receiver to qualify for a CERCLA liability exemption and how to create “guardrails” to protect against abuses that could occur under any liability exemption that might be drafted. According to committee staff, action on a bill is unlikely before the lame duck session. In the House, H.R. 7944, a bill that would provide for an explicit water sector exemption from liability remains as a marker to rely upon should the Senate pass a bill and send it to the House. H.R. 7944 is important because, if enacted, it would provide protections to wastewater agencies and their contractors that provide biosolids management services.

From a legal perspective, the American Water Works Association and Association of Metropolitan Water Agencies have filed a challenge to USEPA’s MCL standard. The litigation questions the agency’s calculations of the costs of the mandate to justify its publication. The Chamber of Commerce filed a legal challenge to the PFAS hazardous substance designation that has created the potential CERCLA liability for the water sector. Both challenges could result in a judicial decision and force USEPA to revise the rulemakings or toss the rules completely.

Impact to OC San

The decision to include directives to USEPA to provide Congress with data on the impact of the two rulemakings could provide important information that might influence the ongoing legal challenges filed against the MCL and the designation of PFAS as a hazardous substance. The bipartisan effort to address PFAS hazardous substance liability, while unlikely to be acted upon before late fall, continues to gain support from House and Senate members. They believe the matter should be addressed. OC San’s priority to ensure that the wastewater sector receives CERCLA liability protections remains an active issue for Congress.

- ***Fiscal Year 2025 Appropriations***

The House leadership pledged to move all twelve Fiscal Year 2025 spending bills to the Senate before the August recess. It reached an important milestone when the Committee on Appropriations approved the twelve spending measures. Most of the bills were approved on party line votes, including USEPA’s spending bill (H.R. 8998) that passed the House and is pending in the Senate. A final spending agreement before the November election is unlikely since the Senate will not pass its bills, including its version of H.R. 8998, S. 4802. A stopgap spending bill extending into December and perhaps into 2025 should be passed in September to avoid a government shutdown on October 1.

The House-passed USEPA spending bill is notable for the significant budget cuts totaling \$2 billion compared with current year spending level. Specifically, the House reduced the State Revolving Loan Fund (SRF) by almost \$1 billion. While this is a significant reduction, it is important to note that the next phase of the infrastructure law’s supplemental SRF funding of \$9 billion will help to offset the cuts. The House bill also includes the PFAS directives noted previously in this update.

The bill also claws back millions in the USEPA green infrastructure fund, eliminates funding for environmental justice programs, and denies funding of Diversity, equity, and inclusion, environmental programs. H.R. 8998 also includes clarifying language that Community Project assistance would not be subject to federal procurement rules related to sole source project selection.

Unlike the House bill, the Senate bill, S. 4802, does not impose spending reductions. Instead, most programs remain funded at current levels. The SRF, for example, would be funded at almost \$3 billion. The Senate legislation highlights that \$9 billion was advanced as part of the infrastructure law. The Senate bill highlights support for USEPA's effort to develop effluent limit guidelines and biosolids regulations, emphasizing the importance of allocating resources to employ adequate staff for these efforts.

Importance of Spending Bills to OC San

The pending financial priorities for Fiscal Year 2025 are important to OC San for three reasons. First, the federal infrastructure partnership with wastewater agencies will remain robust. Second, the continuing education on the challenge of PFAS treatment and destruction has apparently put a pause on using the appropriations process to dictate treatment and clean-up mandates. Instead, it appears, based upon the House and Senate bills, that a focus on collecting data to justify future mandates and standards has gained support. This suggests that Congress is prepared to wait for the USEPA to develop standards that it can review. The House bill mandates to report on PFAS drinking water mandates' costs and the implementation of USEPA's statements that it would not seek to impose liability on wastewater agencies. This indicates a potential for increased oversight on the impacts, costs and benefits of USEPA's rules and policies upon the water sector. The spending bills' focus, if enacted, would likely assist in the effort to secure a passive receivers PFAS liability exemption. Third, the directive waiving sole source prohibitions on congressionally directed spending, if enacted, would clarify that projects, like OC San's, would not be subject to competitive solicitations.