



TO: Rebecca Long

FROM: Eric Sapirstein

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SUBJECT: Washington Update

The past month's legislative and regulatory activities were minimal due to the approaching holidays and end of the congressional session. Generally, the activities centered around a limited number of bills and federal agencies issuing updates on rulemakings and notices of funding opportunities. Congress will return to work January 9, 2024 for the final session of the 118th Congress. Given the approaching November elections, the opening months of 2024 are expected to set the stage for final action on fiscal year 2024 spending bills, developing fiscal year 2025 spending bills, and a host of pending issues including per- and polyfluoroalkyl substances (PFAS) clean-up and western water legislation. The following summarizes how the current congressional session concluded and the outlook for the second session.

- ***Fiscal Year 2024 Appropriations Remain to be Finalized in 2024***
For the first time in years, Congress avoided an end of year shutdown potential. It agreed to the new Speaker's approach to pass a tiered Continuing Resolution with two deadlines, splitting the twelve annual spending bills into two baskets. The first basket that includes funding for U.S. Bureau of Reclamation and U.S. Army Corps of Engineers (USACE) programs and a final spending bill must be agreed upon by January 19. The second funding deadline of February 2 includes U.S. Environmental Protection Agency (USEPA) programs that fund Community Project Requests, State Revolving Loan Fund water infrastructure, Superfund cleanups and PFAS initiatives. Absent an agreement on final spending bills within these deadlines, Congress will need to extend the short term spending deadlines or default to a year-long Continuing Resolution.

Why the Outcome of Fiscal Year 2024 Negotiations is Important to OC San

If the House, Senate and Administration are unable to reach an agreement on overall spending, known as “top line,” spending levels, the House and Senate Committees on Appropriations will lack a common budgetary baseline upon which to guide individual spending bill negotiations. This is the current situation that the committees must address in the first few days of 2024. If successful, final negotiations on individual spending bills would proceed. If, however, an overall agreement remains elusive, the prospect of Congress passing a year-long Continuing Resolution grows. If a Continuing Resolution is passed, tradition holds that new programs and projects spending, including Community Projects, would be precluded.

Fiscal Year 2025 Spending Will Challenge Congressional Priorities

On the heels of any final Fiscal Year 2024 spending agreement, Congress must almost immediately turn its attention to the Fiscal Year 2025 budget request. Under the Budget and Impoundment Control Act, the president must transmit the formal budget on the first Monday of February. Past Administrations have missed this deadline, and this year is not likely to be different given the ongoing effort to finalize Fiscal Year 2024 spending. Nonetheless, when the budget is transmitted to Congress, we anticipate that the debate will unfold targeting cutting the federal budget or at least constrain any increases the Administration might propose.

Importance of Fiscal Year 2025 Budget Debate

The Fiscal Year 2025 budget request and ensuing congressional debate is likely to heighten the political debate over how the federal government should allocate federal resources as the congressional and presidential elections unfold. Given the growing clout of fiscal hawks that are seeking reduce the deficit, and by extension the growth of the federal debt, it is an almost foregone conclusion that any final spending resolution would be delayed until a Lame Duck Session following the November 2024 that would likely be guided on which party controls Congress and the White House. For OC San, the delay in finalizing spending bills could lead to a large omnibus spending bill that might carry other legislative priorities like PFAS mandates upon wastewater treatment operators with a focus upon biosolids. However, this is purely speculative and represents a worst case scenario where policy initiatives that might not have sufficient support to pass as stand-alone measures would be attached to must pass legislation.

- ***Senate PFAS Legislation Remains A Work in Progress***

The Senate Committee on Environment and Public Works continues to develop approaches to address PFAS control and clean-up needs. Following the November meetings called to consider Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) PFAS liability policy concerns, the committee staff have continued to re-evaluate approaches to protect passive receivers from CERCLA clean-up mandates.

At this writing, no agreements have been announced and the prospect remains that the committee will redouble its efforts to secure a bipartisan agreement on legislation not later than March to allow adequate time to consider a bill before Congress recesses later in the year for the November elections.

Why the Current Senate Committee Schedule is Important

The committee schedule to consider a PFAS bill has been delayed by several times. This demonstrates the committee commitment to develop a bipartisan bill that would address PFAS passive receivers' concerns over CERCLA liability. As of this writing, the committee is facing a U.S. Environmental Protection Agency announced intention to designate PFAS as a hazardous substance under CERCLA that would trigger potential and broad liability for all entities that came in contact with PFAS. Based upon the agency's recently published regulatory agenda, the final rule to designate is scheduled for March 2024. This means that the committee (and by extension Congress) would need to complete action on a PFAS bill before March 2024 to avoid a situation where PFAS liability would become a regulatory and legal reality.

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

Both the House and Senate committees with jurisdiction over the Water Resources Development Act reauthorization (WRDA) are likely to begin developing and marking up their respective bills in Spring 2024 to ensure enough time to finalize legislation for enactment in the fall. As has been the circumstance during the past few WRDA's, this cycle's WRDA is likely to be limited to U.S. Army Corps of Engineers programs and policies, resisting efforts to attach extraneous provisions like drinking water programs.

Importance of WRDA

WRDA 2024 is expected to continue to keep the focus on making USACE focus its efforts on climate resilience when undertaking its core missions. To this end, we anticipate programs that could leverage USACE facilities to address water supply reliability and storm events will be central to the development of WRDA 2024.

- ***U.S. Environmental Protection Agency Regulatory Agenda and PFAS***

USEPA as part of a government-wide update, the Unified Regulatory Agenda, issued its priorities for rulemakings over the next six months. The agenda was published alongside the agency's second PFAS Roadmap Update. Central to the publication is the announcement that the agency will:

- issue final PFAS drinking water Maximum Contaminant Level (MCL) by January 2024;
- issue final rule to designate PFAS as a hazardous substance under CERCLA by March 2024;
- issue an Advanced Notice of Proposed Rulemaking to designate PFAS as a hazardous constituent under the Resource Conservation and Recovery Act;

- define PFAS as a chemical of special concern under the Toxics Substances Control Act and thereby eliminate any exemption from reporting PFAS emissions by manufacturers (water and wastewater explicitly exempted from any impacts); and
- conduct national survey of wastewater influent, effluent and biosolids for PFAS levels.

Importance of USEPA Schedule

While the agenda contains a number of known priorities, in total it illustrates the commitment to move expeditiously on PFAS rules and policies in the lead-up to the final months of the Administration's first term.