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SUBJECT: Washington Update

Congress was on recess during for past six weeks and returned to work on September 6 for the Senate and September 12 for the House. As a result of the recess, no legislative action occurred during the past month. The following summarizes the outlook for key legislation of interest to OC San as Congress enters the final four months of the first session. We also provide a brief overview of U.S. Environmental Protection Agency (USEPA) activities that could impact OC San directly or indirectly.

- ***Fiscal Year 2024 Appropriations Delay Over Funding Levels***

The House and Senate Committees on Appropriations approved radically different funding levels for federal agencies and departments. The differences are so great that finalizing any one of the twelve spending bills by October 1 is all but impossible. Instead, conventional wisdom suggests that the government will operate on a Continuing Resolution (CR) after October 1 when fiscal year 2024 begins. Speaker Kevin McCarthy has signaled that he would like to pass a CR to mid-November to allow for time to finalize an omnibus spending bill with the Senate.

The outstanding question is whether the government will shut down. Members of the House Freedom Caucus are demanding reduced funding levels, below current year levels, under any CR and policy riders addressing border security among other matters. These demands have been rejected by Senate Democratic leaders. Regardless of the outcome, it seems highly probable that debate over a final spending bill for fiscal year 2024 will extend into December.

Why CR Would Impact OC San

Under any CR, Congress is precluded from funding new projects and programs and would limit increases to existing programs. While the impact would be limited should Congress limit a CR to just a few months, if a CR were to be extended into 2024 it might limit the USEPA's ability to implement programs related to wastewater treatment mandates for per-and polyfluoroalkyl substances (PFAS) chemicals.

- ***Senate PFAS Legislation***

During the month of August, Senate Committee on Environment and Public Works staff reviewed more than 300 public comments (OC San provided comments to the committee on its portal) on a proposal to address PFAS research, data management and technology demonstrations needs. According to committee staff, significant input was received on the need for a water sector exemption, including biosolids, from Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) liability, given USEPA's continued priority to list PFAS chemicals as hazardous substances under CERCLA. Staff are working on fashioning a bipartisan bill that could be the focus of a PFAS committee hearing later this fall. Given the limited congressional calendar, it seems increasingly likely that PFAS legislative debate will extend into 2024.

Why the Effort is Important to OC San

The Senate committee priority to develop a bipartisan PFAS bill represents a key opportunity to secure a legislative liability remedy to USEPA's proposed and imminent designation of PFAS as hazardous substances under CERCLA. Absent a legislative fix, the agency's action to designate PFAS means that the CERCLA foundational principle of polluter pays would become a ratepayer pays approach as potentially responsible parties would be expected to try and capture other entities including wastewater agencies that were not engaged in the production or use of PFAS but may have handled PFAS contaminated influents. It also represents a potential liability impact for the management and disposal of biosolids, during the treatment process. Consequently, any Senate consideration of PFAS legislation is expected to see significant debate over how to draft an amendment to protect innocent parties like OC San that are tasked with providing a public health service and avoid transferring cleanup responsibilities on wastewater agencies and ultimately the ratepayers.

- ***Regulatory Efforts***

The USEPA continues to advance policies with impacts upon OC San. The agency issued a final rule incorporating the U.S. Supreme Court's decision on how to fashion a Waters of the U.S. rule. As a result, a final rule is in place. Notably, the rule preserves the prior rule's provisions that would prevent implementation of new controls on wastewater agencies. On the matter of PFAS, the agency delayed final action on the designation of PFAS chemicals as hazardous substances under CERCLA. In a related matter, the Science Advisory Board (SAB) released its first draft report on risk modeling for biosolids (attached). Last, the Office of Management and Budget issued a final rule on how federal agencies must implement the Buy America Buy America (BABA) mandates included in the infrastructure law. The rule and related guidance effectively

imposes BABA on all federal financial assistance programs but clarifies that agencies like USEPA retain sole responsibility to determine whether to grant waivers from BABA mandates.

Why These Activities Are Important to OC San

Each of these administrative activities will lead to clarifications on what OC San's regulatory obligations will be going forward. Of special note is the SAB's draft report on biosolids risk modeling. If finalized and USEPA adheres to its findings, it should provide the scientific basis for any reasonable rules impacting biosolids. On the issue of BABA, while OC San is unlikely to be impacted by the rule and guidance given its priority to rely on a pay go model relying its resources, should future grants and other assistance become attractive, OC San will have a clear understanding on how it would need to comply with the BABA mandate.