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FROM: Eric Sapirstein  
DATE: November 18, 2024  
SUBJECT: Washington Update

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Congress returned for the Lame Duck Session on November 12. The session is expected to run until a final spending agreement for FY 2025 is passed. However, the current stop gap spending expires December 20 and at this writing it is unclear if Congress will reach a compromise spending bill or pass another Continuing Resolution extending funding into January or possibly into March. The session is likely to see action on disaster assistance funding, completing action on the Water Resources Development Act of 2024, and potentially limited permitting reform legislation. Action on Per- and polyfluoroalkyl substances (PFAS) liability exemptions for the water sector is highly unlikely given the significant differences between Senate Republicans and Democrats on how to fashion any liability protections.

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

- ***Election Results Deliver Unified Government***

For the first time in years, one party control, Republican, will be the order of the day come January 20, 2025, relegating House and Senate Democrats to loyal opposition status. While the unified governance will allow the Trump Administration to expedite its policy priorities, the narrow majorities of the past four years will continue. Speaker Johnson will likely have at most 222 votes. A majority is 218. Johnson will enjoy the backing of the Administration that should help mitigate any internal dissension within the Republican House that was a consistent challenge during the past two years. The Senate Republicans will enjoy a 53-47 majority but will be confronted by the filibuster that requires a 60-vote threshold to pass most legislation. OC San's congressional delegation is changed with Representative-Elect Min the declared winner against Scott Baugh. Another race, Representative Steel is locked in a historically close race with Derek Tran. Tran currently leads with 36 votes out of more than 300,000 votes. Regardless of the final tally, a recount is highly likely.

Representative Adam Schiff won his Senate campaign and will assume the Senate seat upon certification of his election, as opposed to waiting until January 3, because he is filling the vacancy created by the passing of Senator Dianne Feinstein.

### **Why the Election Returns are Important to OC San**

While the incoming Trump Administration and Republican Congress remains a work in progress there are several anticipated actions that will be important to OC San including:

- FY 2025 programs funding remain a priority for Congress in the Lame Duck Session to avoid complicating the legislative debate in 2025 when the new Administration and Congress will be developing the 2026 budgets and seeking to implement significant changes to the tax code and agency and department programs through Reconciliation. However, the Speaker recently signaled an openness to delay final spending agreements until after Congress convenes in January. This, if pursued, would effectively continue government operations on Continuing Resolution until Congress is controlled by Republican majorities, leading up to President-Elect Trump's inauguration;
  - Roll back of several Biden Administration priorities ranging from Diversity, Equity, and Inclusion to clean energy programs potentially leading to reduced "strings" on program funding award decisions.
  - Revision and/or revocation of core environmental reviews and regulations and guidance likely to dominate the agenda, including Waters of the United States, PFAS risk assessment model and risk management;
  - Streamlining permitting programs that could address Clean Water Act National Pollution Discharge Elimination System (NPDES) permit term requirements;
  - Comprehensive reviews and rewrites of core policies ranging from clean energy subsidies to water resources and water quality to permitting reform to expedite project construction.
- ***Nominations and Federal Bureaucracy Reform***  
President-Elect Trump has moved with dispatch to name a number of agency heads. Of special note, former Representative Lee Zeldin (R-NY) was named to be the next U.S. Environmental Protection Agency (USEPA) Administrator. When in Congress, Zeldin was committed to supporting clean water programs with a focus on watershed protection. Zeldin was a member of the congressional Problem Solvers Caucus, a bipartisan group seeking to find common ground on policies ranging from infrastructure to climate to taxes. Zeldin noted his commitment to clean water and clean air issues, but emphasized his interest in reducing regulatory burdens, when he accepted the nomination.

One of the many consequences of the election is a priority to address the federal bureaucracy's composition. Among these impacts are:

- Implementing "Schedule F" Executive Order; a new classification system of federal employees that would allow the Administration to dismiss federal career officials that currently enjoy civil service protections;
  - Relocating federal agencies out of Washington;
  - Using budget reconciliation process to eliminate programs; and
  - Using budget reconciliation process to revise regulatory mandates with economic impacts.
- ***PFAS Rulemakings and Liability Protection Legislation***

The Office of Water continues to develop the wastewater influent, effluent and biosolids survey to define the nature and extent of PFAS presence. The survey could be delayed given the presidential transition, but should it proceed in the coming year, it will inform USEPA on the level of PFAS loadings in influent and effluent discharges, and biosolids. The survey is expected to lead to a better understanding about the impact of PFAS to surface waters and soils and how to address source control as well as treatment needs. As of this writing, it appears the agency has decided to pursue a targeted approach by first conducting an influent survey rather than survey all three elements of the wastewater treatment process.

Within the context of PFAS liability, both the House and Senate continue to consider approaches to develop a policy to protect the water sector against potential clean-up liability. But the potential of any legislative action in the next month is remote given the ongoing debate on how to address liability concerns of the water sector. An active effort to legislate a policy response to the liability concerns of the water sector is expected early in the new year when presumed incoming Senate Committee on Environment and Public Works Chairwoman Shelly Moore Capito (R-WV), picks up the committee gavel. Capito has made it clear that resolving PFAS liability exposure to the water sector is a priority. Finally, we anticipate Congress will work to legislate funding for PFAS research and technology development to spur on treatment and destruction.

### **Importance of PFAS Liability Initiative**

The shift in party control along with the incoming Trump Administration reinvigorates the policy debate to develop and pass PFAS liability protections as well as funding of clean-up needs of the water sector.

- ***Fiscal Year 2025 Appropriations***

As noted, Congress has until December 20 to pass a final FY 2025 spending package to fund the government through September 2025. Based upon current statements from House Republican leadership and Senate Committee on Appropriations leaders completing action on government spending remains a priority to avoid the potential of another short term spending agreement or a final Continuing Resolution for the remaining months of FY 2025.

However, the strength of this position is tempered by recent comments from Speaker Mike Johnson that he may be open to extending the stop gap funding measure until after the Republicans assume total control of Congress to revise program funding priorities. If a final spending agreement is reached, a number of policy directives are expected to be incorporated including:

- Directives to USEPA to identify the economic impacts of the PFAS drinking water standard on drinking water agencies and to provide technical assistance to support compliance activities;
- Identify the number of drinking water agencies impacted by the MCL;
- USEPA and U.S. Department of Agriculture must maintain its research into the health impacts of PFAS on soils and biosolids, including treatment standards; and
- Directives that USEPA provide Congress a report on progress in the implementation of its policy to not enforce against water sector interests for clean-up liability created by the PFAS hazardous substance Comprehensive Emergency Response Compensation and Liability Act (CERCLA) designation.

### **Impact of Spending Decisions**

Final passage of FY 2025 spending bills is important. Without final agreements the ability to ensure funding to support clean-up of PFAS contamination and development of rules and guidance to bring clarity on how wastewater agencies would be impacted could be compromised. This is the circumstance because under stop gap spending, agencies are prohibited from initiating new programs and funding of projects. Finally, should Congress delay finalizing funding for Fiscal Year 2025, it is possible that a final agreement could be wrapped into a budget reconciliation package that could be used to reorder spending priorities, aligning funding with the yet to be defined Fiscal Year 2026 budget request that would represent the Trump Administration's priorities. On this point it is important to note that employing reconciliation would limit the amount of legislative floor debate and allow any agreement to pass Congress on a simple majority, avoiding the prospect of a Senate filibuster.