



MEMORANDUM

TO: Rebecca Long
FROM: Eric Sapirstein
DATE: January 17, 2020
SUBJECT: Washington Update

Congress returned to work January 7, kicking off the second session of the 116th Congress. Given the fact that the session will be influenced by the Senate impeachment trial, much of the legislative activity will center on the House over the next several weeks. The legislative agenda will pick-up from last year's unfinished business. This includes how to protect public health through regulation of the Perfluorooctanoic acid and perfluorooctane sulfonate (PFAS/PFOA) family of chemicals, as well as who should be responsible for the clean-up of contaminated soils and groundwaters. The renewal of a Water Resources Development Act, adoption of FY 2021 spending bills, and passage of water infrastructure and drought legislation are expected to capture Congress's attention. The following summarizes the status of these and other matters as Congress prepares to resume legislative work, leading up to the November elections.

Fiscal Year 2020 Spending Decisions Establish Baseline for 2021 Spending Bills

The congressional agreement to finalize the spending priorities for the remaining months of FY 2020 was important for more than putting in place spending for the remaining nine months of the year. It is also notable because even if a stop gap continuing resolution is required during the election cycle for FY 2021, which begins on October 1, 2020, spending will be set at levels that will provide meaningful spending levels for programs of interest to OCSD.

As enacted into law, the funding agreement supports the State Revolving Fund (SRF), Water Infrastructure Finance and Innovation Act (WIFIA), WaterSmart and alternative water supply project funding assistance related to water recycling and desalination. Overall, funding levels included \$1.3 billion for the Clean Water SRF program, as well as \$28 million to support for the new stormwater/Combined Sewer Overflow grants assistance program for publicly owned treatment works (POTWs).

Congress defeated efforts to impose policy riders to require regulation of clean water agencies related to PFAS chemicals. It did, however, include several millions of dollars in PFAS-related funding of research to help set monitoring standards and a national drinking water standard (MCL) under the Safe Drinking Water Act.

PFAS Compromise Limits Impact to Public Agencies Under NDAA, But House Moves Separate Legislation as First Order of Business in New Session

The House and Senate Committees on Armed Services finalized a National Defense Authorization Act (NDAA, S. 1790) agreement that was signed into law with a handful of PFAS-related provisions. The long-delayed agreement includes a scaled-back series of provisions to address groundwater contamination from PFAS chemicals. The agreement means that public agencies and ratepayers would not be unduly burdened with costly mandates to address PFAS contamination that were created by industry. The agreement means the potential for Superfund liability for cleanup costs is temporarily on hold. The Senate defeated proposals to rely on Superfund's liability framework that held the potential for cleanup directives issued to agencies simply because an agency received contaminated waters in the course of providing a public service. However, the agreement did impose a series of new mandates that may impact public agencies. Among the provisions are: a new priority for the monitoring for emerging contaminants of concern, monitoring surveys into the presence of PFAS chemicals in waterways, and requirements to issue monitoring and treatment standards. One notable provision will directly impact clean water agencies. It involves a directive that United States Environmental Protection Agency (USEPA) issue "interim" guidance on how to treat and dispose of biosolids, spent water filters and leachates that contain PFAS chemicals. It is unclear how USEPA would develop such guidance. It has one year from enactment of the measure to issue the guidance.

While designation of PFAS/PFOA chemicals as hazardous substances under Superfund were left out of the NDAA package, the debate over the issue resurfaced in January when the House approved the PFAS Action Act (H.R. 535). The bill moved on a bipartisan vote with two dozen Republican votes in favor. H.R. 535 is a collection of PFAS regulation and cleanup mandates that failed to be included in the NDAA compromise. Under the House-passed measure, PFAS family of chemicals would be designated as a hazardous substance under Superfund. If enacted, this provision could expose clean water agencies to potential Superfund liability for treating and disposing of PFAS contaminated materials, including biosolids. The White House issued a forceful veto threat on H.R. 535. Adding to the tough legislative climb for H.R. 535 is a statement from Senate Committee on Environment and Public Works Chairman John Barrasso (R-WY), upon House passage, who effectively highlighted the fact that H.R. 535 is dead on arrival in the Senate.

White House to Transmit 2021 Federal Budget in February

The FY 2021 budget request will be formally transmitted by the White House to Congress on February 10. The action could improve the odds that Congress will have adequate time to develop spending bills by October 1, 2020 and avoid the need for a stopgap spending bill to cover the months when Congress will be on recess in the run-up to the November elections. An optimistic outlook is only possible because Congress and the White House last year reached a two-year budget agreement that established total spending. This means that Congress could speed consideration of individual agency spending bills later this spring and summer.

WOTUS Rewrite Imminent

After three years of effort to repeal the Obama Administration's rulemaking that defined and governed waters subject to regulation under the Clean Water Act. The White House and USEPA are readying the publication of a final rule known as the Waters of the U.S. Under the soon-to-be publication in the Federal Register, the rulemaking is expected to limit waterways subject to regulation and preserve the existing regulatory exemptions for wastewater discharges that are regulated through the NPDES program.

NEPA Rewrite Underway

The Administration is readying a second major environmental rule revision, following its Waters of the United States (WOTUS) rewrite. After months of reviews, the National Environmental Policy Act (NEPA) will be revamped by a formal rulemaking. Under the revision, the White House is working to streamline project reviews to allow for speedier approvals and construction of projects. The proposal would impact projects ranging from water to road projects. Under the fifty-year old law, which has never been updated, project approvals have in some instances required a decade to be reviewed and approved. Under the rule revision, project reviews would be subjected to specific timetables and one federal agency would be designated as a lead agency to reduce multiple project reviews that can often be duplicative. Environmental organizations are expected to litigate the rule.