



TO: Rebecca Long

FROM: Eric Sapirstein

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SUBJECT: Washington Update

Congress returned from an extended recess to continue its efforts to develop a fiscal year 2024 budget and most importantly an increase in the debt ceiling. In addition to the budget and spending debate, efforts to overturn the Waters of the United States (WOTUS) rule that became effective in March were dispensed with as the House and Senate could not overturn the president's veto of the congressional resolution to nullify the rule. The following summarizes the status of issues of interest to OC San.

- ***PFAS Rulemaking and Legislation Continue to Take Shape***

The U.S. Environmental Protection Agency's (US EPA, agency) Office of Water continues to move forward with its aggressive agenda to finalize designation of Per- and polyfluoroalkyl substances (PFAS) chemicals as hazardous substances under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Following its proposed rule to designate PFOS and PFOA, the agency on April 12 issued an Advanced Notice of Proposed Rulemaking to designate an additional seven members of the PFAS family, including GEN X. The agency provided for a swift thirty-day public comment period. After the closing of the period (May 13), the agency is expected to review comments and quickly issue a final rule. This will effectively expand the universe of PFAS chemicals subject to CERCLA cleanups and liability impacts.

The agency action only heightens the need for legislative action to provide an exemption from CERCLA liability. The anticipated draft Senate legislation has not been released as the Senate Committee on Environment and Public Works staff have been unable to reach a bipartisan agreement on the parameters of any bill. While we anticipate a draft to be released, it is unclear when this will happen. The committee staff understand the water sector's (and others) needs for a passive receiver exemption from CERCLA liability.

Adding to the debate over the need for an exemption is USEPA's assurances that it will rely upon its discretionary authority. Validating OC San's concerns about liability exposure under CERCLA, the U.S. Chamber of Commerce recently challenged the agency's legal authority not to enforce against specific sectors, like wastewater agencies. The Chamber argued in a letter to USEPA and the Department of Justice that any such policy would be subject to legal challenges.

PFAS CERCLA Liability Exemption Legislation

Congressional efforts to address wastewater agencies' potential PFAS liability under CERCLA because of USEPA's decision to list PFAS as hazardous under CERCLA continue to take shape. Senate Committee on Environment and Public Works member Cynthia Lummis (R-WY) is expected to introduce legislation providing for an explicit exemption from CERCLA liability for the water sector. The bill as drafted adopts the language that OC San had advocated for over the past year. Notably, the bill will address biosolids to ensure that the continued beneficial uses of biosolids remain available. As of this writing, any action on the legislation is unlikely until later this summer when the Senate committee might consider a broader bill in support of funding for PFAS destruction technologies.

House Committee on Natural Resources Conducts California Water Hearing

The House Committee on Natural Resources (committee) held a field hearing into Representative David Valadao's (R-CA) WATER for CA Act (H.R. 215) where Central Valley water interests testified on the importance of legislating long term solutions to assure reliable water supplies. Noting the fact that the past winter's storms provided a respite from the urgency of the drought, the witnesses emphasize that water supplies will continue to be threatened. The hearing illustrated that a consensus exists to move a bill forward. However, the parameters of any bill remain to be finalized due to voiced concerns over impacts on water rights and water supplies for environmental refuge needs.

As of this writing, The House committee consideration of a bill could be as soon as mid to late of May.