



TO: Orange County Sanitation District

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SUBJECT: Federal Update

Congress returned from its summer recess on September 2. With less than three weeks until the start of fiscal year (FY) 2026, and no agreement on spending bills, Congress will need to pass a Continuing Resolution (CR) or risk shutting the government down on October 1. If a stopgap spending bill is the chosen course, it is likely to extend to the latter part of November to provide appropriators as much time as possible to cobble together an omnibus spending bill with earmarks. In the coming weeks, beyond spending legislation, Congress and the Administration will focus on implementing the Water Resources Development Act (WRDA) ahead of drafting WRDA 2026, advancing Clean Water Act permit reforms, and finalizing per- and polyfluoroalkyl substances (PFAS) rulemakings.

The following summarizes the status of these and other policy issues of interest to OC San.

Fiscal Year 2026 Appropriations - Updated as of September 29

The House passed a CR on a party-line vote ahead of last week's recess. However, the CR stalled in the Senate when Democrats opposed any CR unless Republicans include extensions of insurance premium subsidies and restoration of Medicaid cuts imposed by the One Big Beautiful Bill. Congressional Republican leadership and the president stated opposition to include such provisions. On September 29, House and Senate leaders met with President Trump to negotiate a final agreement on the CR. However, at the time of this writing, it appears that a compromise was not reached. If an agreement is not reached before midnight on September 30, a government-wide shutdown is inevitable.

If the shutdown occurs, the Office of Management may implement an action plan that would implement massive layoffs rather than temporary furloughs of the federal workforce. Under a shutdown, the president will wield increased authority on what agencies remain open as essential work.

Additionally, the elimination of federal programs that currently are unauthorized, may be impacted unless Congress renews programs like the Clean Water State Revolving Loan Fund Program.

Finally, if the appropriations process does in fact come to halt, then it is likely that the length of any shutdown could rival the last shutdown that lasted for more than a month. If this occurs, it could mean that any final resolutions, could be delayed until November.

Current Funding Decisions

The House and Senate Committees on Appropriations approved their respective versions of U.S. Environmental Protection Agency's (USEPA) FY 2026 spending bills. Notable is the fact that both committees preserve the State Revolving Loan Fund program, but with sizable differences. The Senate seeks to provide \$2.7 billion, while the House seeks to provide \$2.1 billion. This will require reconciliation later this fall. Water Infrastructure Finance and Innovation Act (WIFIA) is also supported, with the Senate providing \$58 million and the House providing \$52 million. Both levels are reduced from the current \$72 million level provided in the FY 2025 spending bill. The House spending bill was approved at the committee level on a party-line vote. The Senate committee approved its bill on a bipartisan vote of 26-2. This suggests that developing any compromise bill will be challenging.

PFAS Mandates and Litigation

USEPA has responded to the American Water Works Association (AWWA) and Association of Metropolitan Water Agencies (AMWA) litigation that challenges the agency's Safe Drinking Water Act of 4 parts per trillion (PPT) of Per- and polyfluoroalkyl substances (PFAS) Maximum Contaminant Level (MCL) standard and the use of a hazard index (for PFAS chemical mixtures) rules. On September 10, the agency filed its brief on how it plans to proceed with the litigation. In its brief, USEPA states that it intends to defend its MCL drinking water standard. However, in the same filing, the agency asked the court to vacate the hazard index rule. USEPA states that because of the questionable process that the agency employed in issuing the rule, it violates the law's requirement for individual MCL's for a chemical.

AMWA and AWWA base their challenges on their belief that the 4PPT MCL is based upon flawed science and fails to consider the costs and benefits of the MCL. The second element of the litigation, the hazard index, is grounded on the premise that the agency failed to comply with the law's directives guiding the development of drinking water standards. Given the agency's response to the agreement, it seems likely the court would remand the rule back for further consideration. In sum, the legal challenge if successful would likely force the agency to reopen its rulemaking process to address the science, economics and benefits flaws that AMWA and AWWA claim were inadequately considered.

The agency is also under litigation challenging its rule to designate PFAS as a hazardous substance under the Comprehensive Emergency Response and Liability Act (CERCLA). This rule has created the circumstance where public agencies, like OC San, could be ensnared in CERCLA cleanup liability for PFAS contamination. As noted in past updates, this exists because agencies may have treated PFAS-contaminated water and byproducts that could be found in the treatment process by-products, like biosolids. The agency advised the court it will defend the rule. In making this decision, the agency noted that it is precluded by statute from providing liability protections to passive receivers and requires congressional action.

The agency also closed the public comment period on August 14 on its Draft Risk Assessment Model that would set a 1 Part Per Billion (PPB) exposure level for PFAS in biosolids. The agency received more than 2,500 comments; an exceptional level of input from the public. Central to many of the comments were comments questioning the research and science the agency relied upon to establish the 1PPB standard. Also, many commenters requested that the agency issue national guidance that would inform states and others to rely on the Michigan Model while the agency considers how to finalize the Risk Assessment Model. The Michigan Model is an approach that relies upon source control and pretreatment if PFAS loadings are excessively high. The agency is expected to spend the next several months reviewing comments on the model before issuing a final model that could be relied upon to establish actual treatment standards.

Importance of PFAS Mandates

As noted in prior updates, the outcome of litigation surrounding PFAS drinking water standards, designation of PFAS as a hazardous substance, and finalization of a Risk Assessment Model holds the potential to impose substantial costs of compliance for water and wastewater treatment, as well as exposure to liability for clean-up of PFAS contaminated sites.

Office of Water Assistant Administrator Nominee Likely to Advance and USBR Commissioner Nomination Status Remains Unchanged

The Senate voted 51 to 47 to confirm Jess Kramer to be the Assistant Administrator of the Office of Water at the U.S. EPA. The Senate voted to confirm Kramer, along with 47 other nominees, following Senate Republicans move to revise the rules governing the Senate nomination confirmation. The rules revision allowed Senate leadership to bundle nominations to expedite debate and allow for a simple majority vote to confirm nominees. Prior to the rules change, the Senate debated nominations one at a time and required a 60-vote supermajority to pass nominees.

'Do Not Flush' Labeling Legislation

Earlier this year, the House passed the WIPPES Act (H.R. 2269) on a bipartisan voice vote, sending it to the Senate. In the spring, the Senate Committee on Commerce, Science, and Transportation approved the companion bill (S. 1092) with technical, noncontroversial amendments. The legislation continues to be supported by the clean water sector, wipes industry, and environmental stakeholders, including the California Association of Sanitation Agencies and the National Association of Clean Water Agencies. Work is underway to bring the bill to the Senate floor, and while differences between the House and Senate versions will need to be reconciled, the strong bipartisan support makes final passage likely.