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SUBJECT: Washington Update

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During the past month, congressional and federal agency activities centered on funding decisions for the fiscal year 2025 budget that begins on October 1. Also, the House Committee on Transportation & Infrastructure completed action on its version of the Water Resources Development Act of 2024, setting the stage for a House vote later this summer. The following summarizes activities of interest to OC San and its legislative agenda.

- ***PFAS Hazardous Substance Designation under Superfund***  
As reported previously, the Senate Committee on Environment and Public Works continues to consider options to provide statutory relief from Superfund liability associated with per- and polyfluoroalkyl substances (PFAS) contamination for passive receivers. The challenge is finding common ground within the committee on which stakeholders are considered to be passive receivers. The water sector, which includes wastewater agencies, appears to be a priority stakeholder for protection. However, Republican committee members, led by Ranking Republican Senator Shelly Moore Capito (R-WV), continue to demand a comprehensive passive receivers liability protection provision. Without such a provision, prospects for a bipartisan agreement are unlikely, all but eliminating committee consideration of a bill. The House now has a water sector PFAS liability protection bill, H.R. 7944, which enjoys bipartisan support. However, any House action on PFAS is unlikely until the Senate moves forward on a bill. Legislative consideration of a PFAS liability measure at the committee level is not expected until after the November elections.

While Congress contemplates how to develop PFAS liability protection legislation, the anticipated litigation against the U.S. Environmental Protection Agency's (USEPA) rule to designate PFAS as a hazardous substance has been filed. The lead plaintiff is the U.S. Chamber of Commerce. The Chamber filed the litigation based upon a violation of the Administrative Procedures Act. The actual complaint remains to be submitted as the Court must first agree the litigation is with merit. The Court is expected to approve the challenge.

### **Importance to OC San**

While the Chamber litigation does not directly address the wastewater industry, the impact of the litigation, if successful, would effectively remove the designation of PFAS as a hazardous substance under Superfund. Assuming this occurs, then OC San treatment of wastewater and biosolids would not be impacted by potential Superfund liability.

At the same time, USEPA continues to advance its risk assessment model development on the threats from PFAS in biosolids. As of this writing, it is expected the model will be released in October and will include a matrix of PFAS treatment levels based upon the pathways of exposure. Assuming the model is validated and finalized, it will serve to support the development of new biosolids treatment mandates.

- ***Fiscal Year 2025 Appropriations Decisionmaking Begin in House***

The House and Senate are beginning the process of developing appropriations bills for the new fiscal year that begins on October 1, 2024. The House Committee on Appropriations, Subcommittee on Interior and Environment approved its bill on June 27 that funds USEPA. Full committee consideration of the measure is expected July 9, when Congress returns from its Independence Day Recess. The Senate committee remains mired in discussions over how much defense and nondefense spending would be permitted. Until these funding levels are agreed upon, progress in developing spending bills is on hold. However, the committee leadership has signaled that actual subcommittee mark-ups will begin in mid-July.

House Subcommittee spending decisions for USEPA programs reflect the priority to reduce domestic spending. To this end, USEPA would be cut by 20 percent with most of the reduction in climate programs. The Clean Water State Revolving Loan Fund program would be reduced by \$430 million to \$1.2 billion compared with current year levels. The bill's overall reductions do not account for the advanced appropriations provided under the Bipartisan Infrastructure Law that include \$1 billion for the State Revolving Fund (SRF) program. This funding will help to offset the SRF reductions, should they be enacted into law later this year. The bill also includes a number of policy riders. Of special note is a policy rider that waives federal procurement mandates for Community Projects Requests assistance (earmarks). The rider is retroactive to address prior years' funding of earmarks.

### **Importance of House Fiscal Year 2025 Appropriations Bill to OC San**

The funding bill is important to OC San because of the policy rider related to earmarks. Under the policy rider, USEPA would be precluded from imposing competitive bidding requirements as a condition of receiving grant assistance. This would directly benefit OC San and its earmark for the Supercritical Oxidation demonstration project. If the rider is approved as part of any final spending agreement, later this year, OC San would enjoy clear and unambiguous statutory directives to USEPA to award funds absent a competitive bid.

- ***Supreme Court Tosses Out Chevron Doctrine***

On June 28, the U.S. Supreme Court (Court) ruled 6-3 to strike down the Chevron Doctrine; a forty year legal standard that essentially deferred to federal regulatory agencies' expertise in resolving matters of ambiguity in statutory directives. The Court decided the Chevron Doctrine represented an unacceptable delegation of authority to unelected officials to determine questions of uncertainty created by laws that do not clearly articulate how extensive an agency can regulate activities. Instead, the Court decided that questions surrounding congressional intent and interpretation of statutes must ultimately rest with the judicial branch whose responsibility is to adjudicate such matters. It is important to note the decision only impacts rulemakings. Policy and guidance are unlikely to be impacted. In deciding the case, Chief Justice Roberts stated, in the decision, that the rejection of the Chevron Doctrine should not impact past regulatory decisions and actions. However, the decision does not bar challenges to past regulatory initiatives that a regulated party might wish to now challenge as exceeding the authority the statute provided the agency.

### **Decision Will Impact OC San Services**

The elimination of the Chevron Doctrine represents one of the most consequential policy actions in decades. The ability to challenge a rulemaking that is grounded in an agency interpretation of congressional intent and statutory directives based upon uncertainty or a lack of clarity is expected to unleash a tsunami of legal challenges. For OC San, USEPA's efforts to designate PFAS as hazardous substance under Superfund, for example, could be subject to challenge. Any challenge would be based upon a belief that the agency short circuited the designation process by designating prior to listing PFAS as a hazardous waste under the nation's waste management law, the Resource Conservation and Recovery Act. Looking into the future, the Court's decision will increase pressure on Congress to write laws with greater specificity to avoid uncertainty. The decision could also lead to new urgency to update laws like the Clean Water Act that have not been significantly amended since the 1987. Conversely, if Congress is unable pass new laws, then litigation challenging current and future rules will be inevitable, throwing into doubt federal mandates.