



TO: Rebecca Long  
FROM: Eric Sapirstein  
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SUBJECT: Washington Update

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The House and Senate convened for the second and final session of the current Congress this month. Upon convening, it returned to unfinished business from the past session as it focused its attention onto four legislative matters of interest to OC San. These were: 1) consideration of approaches to address Per-and polyfluoroalkyl (PFAS) contamination with potential impacts upon biosolids and general pretreatment mandates, 2) developing a final Fiscal Year 2022 spending bill, 3) developing the Fiscal Year 2023 budget, and 4) seeking to reach a Senate Build Back Better compromise. Given the fact that this session will be influenced by the upcoming mid-term elections, we anticipate that final action on many of these matters (with exception of completion Fiscal Year 2022 spending decisions) could be delayed until late fall or early winter during a lame-duck session.

Within the administration, U.S. Environmental Protection Agency (EPA) continues to implement its PFAS Roadmap priorities. Most notable are two recent announcements from the agency. First, it has provided the Office of Management and Budget a proposed regulatory approach to designate PFAS as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that could if issued increase the costs of managing biosolids as well as requiring wastewater agencies to revise pretreatment and source control programs.

- ***Infrastructure Law Priority for Implementation***

With the enactment of the Infrastructure Investment and Jobs Act (Public Law 117-58) the implementation of the \$1.2 trillion package becomes the priority. Federal agencies are expected to detail how the funding will be committed as required by the law. Funding of the clean water State Revolving Loan Fund (SRF) program will be the first substantive outcome of the law as California is slated to receive \$600 million for its SRF (clean water and drinking water).

Additionally, grants to support pretreatment program related to PFAS should become available to clean water agencies in the coming months. Of notable importance, a priority to support disadvantaged/underserved communities' needs will guide the distribution of assistance. The definition of these communities will be based upon the state definition. It is assumed that OC San could be eligible for grants assistance to support project needs in its communities that meet the state definition.

- ***PFAS Legislation to Address Cleanups and Liability***

The House-passed PFAS Action Act (H.R. 2467) remains in the Senate Committee on Environment and Public Works. According to Republican and Democratic committee staff, efforts to draft a Senate bill are anticipated in the coming year. In anticipation of this prospect, we are working with a coalition of water association stakeholders to design a coordinated PFAS advocacy approach, including CASA and National Association of Clean Water Agencies. The goal is to work with the Senate committee to address the unreasonable costs and liabilities created by the House-passed PFAS Action Act. We have developed draft policy to secure an exemption from CERCLA liability. This language is under review by a broader group of water association stakeholders with the goal of agreeing on final language that can be advocated by these stakeholders and their member agencies, as the Senate and Congress deliberate over PFAS legislative language that could impose liability and new treatment standards. The prospect of passage of legislation imposing CERCLA liability currently remains slim. However, USEPA efforts to define the chemicals through regulation remain a strong possibility given its PFAS Action Roadmap. Therefore, the effort to seek legislative clarifications remains relevant and a priority for stakeholders.

- ***Fiscal Year 2022 Spending Bill Pending and Fiscal Year 2023 Budget Imminent***

Senate and House Committee on Appropriations disagreements over “top line” spending levels for each of the twelve appropriations bills prevented the development of an omnibus spending bill. This required enactment of a second stop gap spending bill extending funding until February 18, 2022. Appropriations committee staff have reportedly developed spending bill recommendations that the House and Senate Committee on Appropriations leadership will consider in January into early February. At this writing, funding of water infrastructure programs is robust. The House and Senate spending bills also provide language to encourage USEPA to continue its efforts to designate PFAS chemicals as hazardous substances. Funding to support PFAS cleanups could also become part of a final spending agreement, supplementing the grants assistance to assist in capital costs provided under the Infrastructure Investment and Jobs Act.

The Administration is finalizing its Fiscal Year 2023 spending plan. The budget request will be transmitted to Congress in March. The request is expected to call for increased funding of traditional water and natural resources programs. We anticipate congressional offices will again request submissions from public agencies for project assistance. The request will follow the community projects process otherwise known as earmarks that guided funding requests for the Fiscal Year 2022 spending bills.

- ***Build Back Better Legislation***

Continued disagreements over the spending level and program funding priorities continue as obstacles to reach a Senate agreement on the Build Back Better bill. The legislation currently includes a new water ratepayer assistance program as well as funding to support the transition to renewable energy supplies, including to reduce costs associated with water supply reliability. Senator Joe Manchin (D-WV) has restated his opposition to the current framework, citing the \$1.9 trillion price tag, among other matters. His preferred funding level is \$1.5 trillion, provided that a formal “scoring” of the bill’s costs is available prior to any Senate vote. Manchin’s public opposition, along with that of Senator Kyrsten Sinema (D-AZ), deprives Senate Democrats of the fifty votes required to pass a bill. At the time of this writing, it appears that any progress on a final agreement remains a distant goal. It appears any prospect of salvaging legislation requires a significant paring back of provisions and the overall costs of the bill to meet Manchin and Sinema’s priorities to spend no more than \$1.5 trillion and to ensure that approved programs are not temporary in nature. Manchin, on this point, has made it clear he is unable to support a bill that relies on budgetary gimmicks that rely on short-term funding with the hope that Congress would simply extend funding in future years and thereby effectively increase any bill’s costs beyond the \$1.5 trillion ceiling.