



MEMORANDUM

TO: Rebecca Long

FROM: Eric Sapirstein

DATE: October 15, 2019

SUBJECT: Washington Update

Congress returned to work in September after a six-week summer recess. The current impeachment inquiry has thrown into question how the next several weeks of legislative activity will unfold, but finalizing the fiscal year (FY) 2020 spending bills remains a priority. Aside from spending matters, the ongoing effort in the House and Senate to address contamination of water supplies from Per- and polyfluoroalkyl substances (PFAS/PFOA) continues to command attention. The following summarizes the status of these and other matters.

Finalizing Fiscal Year 2020 Spending Decisions Likely to Extend into December

The Senate Committee on Appropriations has approved spending for the U.S. Environmental Protection Agency (USEPA) and the U.S. Bureau of Reclamation (USBR) programs, along with most other federal agency spending measures. However, prospects for Senate floor debate and a vote remain in doubt as the ongoing funding of the border wall continues to slow progress. The current stopgap spending bill expires on November 21 and it is reported that Congress will be forced to extend the stopgap funding until December. Assuming that this occurs, final spending decisions are likely to be enacted into law shortly before Christmas. Irrespective of the timing of a final agreement, overall spending levels for key water infrastructure programs in the Senate appropriations bills of spending levels trends in the same direction as the House-passed bills. However, the minimally lower spending levels in the Senate bills, compared to the House spending bills, may result in bridging differences by reducing spending levels nominally. Program levels for the State Revolving Fund (SRF) and water recycling appear to be targeted at levels

slightly higher than current year with the Clean Water SRF expected to be funded at between \$1.4 and \$1.8 billion.

Additionally, the Senate USEPA spending bill urges the agency to use Water Infrastructure Finance and Innovation Act (WIFIA) to support PFAS-related water projects and lead contamination needs. This funding priority might support groundwater funding needs within the Orange County region that has been a concern for OCSD.

House and Senate Committees Begin Task of Defining the Regulation and Remediation of PFAS/PFOA

The House and Senate Committees on Armed Services continue to seek to reconcile differences between each chamber's version of the National Defense Authorization Act (NDAA). The NDAA is notable because of amendment packages the House and Senate passed to regulate PFAS/PFOA contamination and address the treatment and control of PFAS/PFOA contamination. However, the amendment packages remain a key sticking point in NDAA conference negotiations due to the packages differing legislative approaches employed by each chamber. Further complicating negotiations is the fact that the White House has issued a veto threat on the bill in large measure because of the PFAS/PFOA provisions.

As of this writing, the key dispute centers on a House amendment to require USEPA to designate PFAS/PFOA as a hazardous waste under Superfund. This would create significant impacts for wastewater treatment since any PFAS/PFOA contaminated biosolids, for example, would be subject to new and costly treatment and disposal regimes. Additionally, the potential for trace amounts of the chemicals in effluents could further impose expensive treatment as well as potential liabilities associated with any discharges. The Senate rejected this kind of mandate in its NDAA. Instead, it directs USEPA to develop and issue a drinking water monitoring and treatment standard within two years of any bill enactment that drinking water agencies would need to comply with as directed under the Safe Drinking Water Act.

The potential exists that a consensus on PFAS language as part of any final NDAA may not be reached. This possibility resulted in the House Committee on Energy and Commerce, Subcommittee on Environment approving fifteen PFAS bills. Among the measures were bills to designate PFAS as a hazardous waste and to create an industry supported clean-up fund to respond to groundwater contamination.

Meanwhile, national and state trade associations, including the National Association of Clean Water Agencies (NACWA), Water and Environment Federation (WEF), California Association of Sanitation Agencies (CASA), Association of California Water Agencies (ACWA), and American Water Works Association (AWWA) are working with congressional committees to develop a compromise that would require adequate scientific research into the threats posed from the chemicals before any regulations or conditions are mandated on how to treat, manage and dispose of PFAS/PFOA contaminated substances.

Clean Water State Revolving Fund Infrastructure Bill Discussions Center on Permit Term Extensions

The House Committee on Transportation & Infrastructure staff continue to work on developing an approach to allow for extended National Pollutant Discharge Elimination System (NPDES) permit terms of up to ten years as called for by a broad array of national and state public associations, including CASA and ACWA. The effort to develop compromise language that would enjoy at minimum muted support by the non-governmental organization (NGO) community continues. As a result, committee action on a broader SRF water infrastructure bill, H.R. 1497, has been delayed. Committee staff are expressing a desire to secure an agreement on a compromise approach within the next two weeks that, in turn, would allow for a committee mark-up of H.R. 1497. Failing to secure an agreement could lead to a further delay. However, the impact of the delay would not be measurable since the Senate Committee on Environment and Public Works has indicated that it will not address the SRF or other water infrastructure issues until next year.