



MEMORANDUM

TO: Rebecca Long

FROM: Eric Sapirstein

DATE: September 23, 2019

SUBJECT: Washington Update

Congress returned to work in September after a six-week summer recess. With just a few weeks left in the session, the focus of legislative activity remains finalizing fiscal year 2020 spending bills, reconciling the regulation of Per- and polyfluoroalkyl substances (PFAS/PFOA) in drinking water, and developing water resiliency and infrastructure legislation. The following summarizes the status of these matters.

Finalizing Fiscal Year 2020 Spending Decisions Complicated by Border Wall Funds

The Senate Committee on Appropriations has begun approving the twelve spending bills that fund the various federal departments and agencies. The Energy and Water Development Appropriations bill, which supports water recycling and other western water programs, is pending before the full Senate. Program levels for WaterSmart's Water Infrastructure Improvements for the Nation Act (WIIN) water recycling and desalination remain at effectively current year levels. Action on the all-important Interior and Environment Appropriations bill that funds U.S. Environmental Protection Agency (USEPA) programs is expected to be approved by the end of September. This bill funds the State Revolving Fund (SRF), beach protection and general water quality programs impacting OCSD. We anticipate that the Senate will follow the House lead and approve adequate funding for these programs.

However, Senate action on the bills remains up in the air as congressional opposition to the allocation of additional border wall funding has prevented Senate floor debate and votes on spending bills. In the absence of an agreement on how to address the issue, the House approved a stopgap spending bill to maintain governmental operations from October 1 until November 22, 2019. The Senate is expected to follow this action before October 1.

Assuming this occurs, Congress and the Administration will likely spend the next two months seeking a compromise on the level of funding to provide to border wall construction and how to prevent future reallocation of defense-related spending to boost the border wall funding program.

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

The House and Senate Committees on Armed Services have begun the process known as Conference Committee to reconcile differences between each chamber's version of the National Defense Authorization Act (NDAA). NDAA is notable because proponents of regulating PFAS/PFOA amended the bill to address the treatment and control of PFAS/PFOA contamination. The challenge remains the two very different approaches employed by each chamber and the fact that the White House has issued a veto threat on the bills 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 of 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 White House and USEPA have argued that such an approach is unwarranted as USEPA has issued a PFAS/PFOA action plan to guide its decision making. 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 permit terms of up to ten years as called for by a broad array of national and state public associations, including CASA and ACWA. As of this writing, the ongoing effort has delayed action on a broader water infrastructure bill, H.R. 1497, because of the priority attached to the development of a policy to permit extended permit terms as contained in the legislation H.R. 1764. H.R. 1764 is sponsored by Representative John Garamendi (D-CA) and enjoys bipartisan support from across the nation. As of this writing, the effort to develop a policy is centering on a handful of issues. These matters include ensuring that only “good actors” are eligible for extended permits. Assuming that a clear and workable definition can be reached, it is possible that the committee would move to completing action on a water infrastructure bill in October.

Committee Approves Clean Water Geographic Programs

The House Committee on Transportation & Infrastructure moved a series of bills in the absence of an agreement on an overall water infrastructure bill. The measures, known as geographic programs, provide for continued funding of regional water quality improvement programs such as the National Estuary Program that captures a number of protected estuaries and bays in California, including Santa Monica, Monterey, and San Francisco Bays. Action in the House is likely before the end of the session. However, Senate consideration is not expected until next year when a comprehensive water resources and infrastructure bill is slated to be acted upon by the Senate Committee on Environment and Public Works.