



MEMORANDUM

TO: Rebecca Long

FROM: Eric Sapirstein

DATE: February 17, 2020

SUBJECT: Washington Update

Over the past month, congressional activity centered upon drafting Water Resources Development Act proposals, receiving the Administration's fiscal year 2021 budget request, introducing plastic pollution legislation, and reviewing legislative options for the development of innovative water supply and drought legislation. The following summarizes the status of these, and other matters Congress is working on prior to the Easter Recess in April.

Fiscal Year 2021 Budget Seeks to Reduce Domestic Spending, Congressional Views Indicate Bipartisan Opposition

The White House sent its proposed spending priorities for fiscal year 2021 that begins October 1, 2020 to Congress on February 10. Despite the fact that Congress and the White House reached a two-year budget agreement last year, which established top-line spending for domestic and national security programs, the proposed budget effectively rejected the agreement. Instead, the budget seeks to rollback spending on domestic programs like as water infrastructure assistance, including the State Revolving Fund (SRF) program. Not surprisingly, the request was met with congressional leadership comments that it is dead on arrival in Congress. In fact, Senate Majority Leader Mitch McConnell (R-KY) stated that his intention is to abide by the budget agreement, providing for continued strong support for water infrastructure assistance as well as other domestic and national security program spending.

In general, the budget request seeks to fund programs at levels requested for fiscal year 2020. For example, instead of seeking \$1.6 billion for the clean water SRF, as provided under the current budget, the request seeks \$1.1 billion. Similarly, funding of water recycling programs under the U.S. Bureau of Reclamation's (USBR) Water Infrastructure Improvements for the Nation Act (WIIN) Title XVI program would be effectively eliminated. Only \$3 million is requested. In fiscal year 2020, Congress and the White House agreed to a \$60 million funding commitment.

One program that seems to enjoy Administration support is Water Infrastructure Finance and Innovation Act (WIFIA), but even this program would be supported at a reduced rate of \$25 million, compared with a current year level of \$60 million. One program that enjoys strong U.S. Environmental Protection Agency (USEPA) support is the new combined sewer overflows (CSO)/sanitary sewer overflows (SSO)/Stormwater grants program that supports projects to control such discharges. The budget seeks \$61 million, an incremental bump-up of \$1 million from the fiscal year 2020 request. Congress only provided \$28 million in fiscal year 2020.

Generally, the budget request summary indicates that funding levels do not mean a lack of support of the programs. Rather, the significant increases secured in fiscal year 2020 argues for the reduced spending.

One important matter in the budget request is how the Administration intends to address Per- and polyfluoroalkyl substances (PFAS) regulation. Under the budget request, USEPA, working the Defense Department, will continue to develop standards to advance the knowledge of the public health threats and how best to address the threats. There is no significant funding of cleanups of contaminated groundwater sites under the USEPA request.

PFAS Legislation and USEPA Actions to Define Needs Still Under Scrutiny

It remains highly unlikely that Congress will use the remaining months of the session to pass legislation to address PFAS contamination, beyond the compromise passed as part of the National Defense Authorization Act last December. Senators, however, continue to develop legislative approaches to control the management and cleanup of PFAS contaminated sites. As of this writing, key Senate Committee on Environment and Public Works Senators, where PFAS legislation must be considered, have signaled that no further legislative action is likely this year. This position means that concerns that PFAS might be designated as hazardous under Superfund should not be a concern. Instead, the Senators cite a desire to allow USEPA the time to develop a scientifically valid approach to address PFAS controls through the Safe Drinking Water Act, as well as issue guidance on the management and disposal of PFAS contaminated materials, like biosolids.

USEPA staff continue to review the underlying science of PFAS. In meetings with USEPA staff involved in the development of federal PFAS policy, we learned that staff appear keenly aware of the potential disruption that could occur for biosolids management should a hazardous substance designation be made. To this end, the agency seems to be pursuing a two-pronged approach. First, it plans to develop a simple and expedient test to determine if PFAS even exists in the wastewater stream. It also intends to develop standards for specific PFAS compounds that are deemed to be a significant public health. The logic of this approach is to allow for the detection of PFAS, before requiring testing of tens of hundreds of compounds. The second approach involves biosolids. In an effort to develop an appropriate testing protocol for biosolids and methods to manage biosolids, the agency is planning convene a working group during the upcoming WEF biosolids/residuals conference in March. At this meeting, the agency hopes that it can begin the process of developing recommendations on how to manage and dispose of biosolids if PFAS are found in biosolids.

Plastics Pollution Legislation Targets Flushable Wipes

Representative Alan Lowenthal, joined by OCSD's Representative Harley Rouda along with neighboring Member Mike Levin, introduced the *Break Free From Plastic Pollution Act of 2020*. The measure provides for a comprehensive approach to reduce plastic pollution through incentives to recycle, eliminate single use, and other methods to reverse the impacts of the growing plastic pollution related impacts upon coastal and land resources.

In an important recognition of the efforts of OCSD, and other California wastewater agencies, Lowenthal included a provision to require the proper labeling of flushable wipes and to mandate compliance with international standards to ensure that wipes deemed to be flushable and that degrade are properly identified. The legislation was introduced in the Senate also where Senators Dianne Feinstein and Kamala Harris are original cosponsors with the bill's sponsor, Tom Udall (D-NM). The legislation is a comprehensive approach that may have challenges being passed this year, because of the limited time remaining in the session, but elements of the measure, like the wipes provision, could be considered separate from the overall measure should progress stall.

Water Recycling Priority Gains Traction in House and Senate Water Legislation

Both the Senate and House continue to grapple with finding a mutually acceptable approach to support western water supply needs. In the Senate, Senator Dianne Feinstein has scaled back an earlier initiative to renew the WIIN to avoid opposition that the non-governmental organization (NGO) community has voiced over provisions deemed to lessen protections of natural resources in an attempt to construct storage facilities.

At the same time, in the House, Representative Jared Huffman is finalizing a proposal that seeks to allow for storage projects, provided that projects receive authorization and that ecosystem benefits exceed baseline minimums. At core, the Huffman proposal seeks to enhance water innovation through support of water recycling infrastructure assistance. Senator Feinstein's proposal also provides funding for such projects.

NEPA Rewrite Underway

The White House has released its proposed rewrite of the National Environmental Policy Act (NEPA), the nation's rules governing environmental impacts of a project. The rewrite targets a priority to expedite environmental impact reviews of large infrastructure projects like transportation and water projects in order to reduce delays in projects becoming operational. Under the proposed update, the NEPA process would be redesigned to impose project review timelines of two years and identify a single agency as the point of contact and manager of a NEPA review process. The rule revision is currently undergoing public comment. We anticipate that a final recommendation could be developed and published later this summer. As reported last month, we anticipate that any proposed rewrite will be subject to litigation by the NGO community.