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March 11, 2024

The Honorable Tom Carper
Chair
Committee on Environment and Public Works
513 Hart Senate Office Building
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
170 Russell Senate Office Building
Washington, DC 20002

Re: PFAS & CERCLA

Dear Senators:

California Water Service Group (Cal Water) and our subsidiaries provide safe, clean, and affordable water and wastewater service to more than 2 million residents of California, Hawaii, New Mexico, Texas, and Washington. We work daily to meet state and federal health and safety regulations. Our more than 1,200 employees are proud to be part of the communities we serve and are dedicated to providing our customers with high quality service.

Cal Water strongly believes that passive receivers of Per- and polyfluoroalkyl substances (PFAS), particularly those providing critical public services such as drinking water and wastewater treatment that neither manufacture nor use PFAS, should not be subject to liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) when PFAS is found in drinking water and wastewater. Cal Water has been at the forefront of protecting public health and the environment in its approach to PFAS. Because water and wastewater treatment is funded by the families benefitting from these services, this means that the brunt of PFAS-related costs imposed on water and wastewater utilities are and will be borne by people other than those who created the PFAS crisis.

Cal Water commends the Environmental Protection Agency (EPA) for attempting to right this wrong by holding polluters accountable by designating PFOA and PFOS as hazardous substances under CERCLA. Unfortunately, without Congressional action to protect water and wastewater systems from CERCLA liability, hundreds of millions of Americans will be exposed to even greater costs to clean up a problem they did not create.

CERCLA is based on the principal that parties responsible for contamination should pay for its remediation, known colloquially as “polluters pay.” The producers, manufacturers and parties that used PFAS chemicals in their operations are all clearly responsible parties. Water and wastewater systems and their customers are clearly not.

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EPA Administrator Regan has stated in testimony before Congress that the agency does not intend to seek clean-up costs from water and wastewater utilities for PFAS under CERCLA. While Cal Water appreciates this sentiment, it is not binding on future administrators. More importantly, this enforcement discretion cannot protect water and wastewater systems from being named in a private cause of action or being brought into an EPA enforcement action by a potentially responsible party to dilute their liability. The legal fees and liability exposure from these near certainties will have far-reaching impacts on utility budgets and customer rates.

Only Congress can provide the protection water and wastewater systems require to keep providing clean, safe water and wastewater services at reasonable rates.

Moreover, the EPA's proposed maximum contaminant levels for certain PFAS means that the only entities with a legal requirement to remove those PFAS from the environment would be water systems (again, with the bulk of those costs being borne by customers). It would be wholly inequitable to direct water and wastewater utilities to clean up a problem they did not create while at the same time exposing their customers to potentially billions of dollars of liability when the filters used to remove PFAS are disposed of. Congress must take action to protect these innocent parties by enacting an exemption from CERCLA liability for the disposal of PFAS removed from water and wastewater by public utilities.

Cal Water strongly urges you to pass a CERCLA exemption for all water and wastewater systems to protect customers from needless rate increases.

Sincerely,

Justin Skarb

Vice President, Government & Community Affairs

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