March 7, 2024

The Honorable Tom Carper
Chairman
Committee on Environment and Public Works
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

The Joint Water Commission (JWC) shares the U.S. Environmental Protection Agency's (EPA's) commitment to using and advancing the best available science to tackle per- and polyfluoroalkyl substances (PFAS) pollution, protect public health, and harmonize policies that strengthen public health protections to deliver safe drinking water. Four agencies share ownership in the JWC including the Cities of Hillsboro, Forest Grove, and Beaverton and the Tualatin Valley Water District (TVWD). The JWC is the primary drinking water supplier in Washington County, Oregon, and is responsible for treating, transmitting, and storing potable water for approximately 450,000 customers. It is within this context that reflects the JWC's concerns as they pertain to the EPA's proposed designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as hazardous substances under CERCLA.

This proposed rule, which is now in final review at the U.S. Office of Management and Budget (OMB), will cause water systems including the JWC partner agencies and our ratepayers – rather than polluters – to incur environmental cleanup liability that should be faced by entities responsible for that pollution. **We therefore ask you to support a statutory protection for water systems from liability under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for per- and polyfluoroalkyl substances (PFAS) to help ensure polluters, not the public, pay for PFAS cleanup.**

From the start, CERCLA was built on a "polluter pays" principle, envisioned as holding companies that produced and profited from hazardous substances that were discharged into the environment responsible for their cleanup. This polluter pays principle is laudable – but unfortunately, the proposed designation of PFOA and PFOS – nondegradable "forever chemicals," which are now ubiquitous in the environment— means that drinking water and wastewater systems that passively receive these substances into their systems could

face CERCLA cleanup liability simply because an upstream polluter deposited the chemicals in their water supplies.

A CERCLA designation for PFAS exposes drinking water utilities like ours to potential litigation from the actual polluters. PFAS users and producers can abuse litigation to reduce their own clean-up costs and increase costs on water utilities – costs which we are then forced to pass along to ratepayers. Even when water systems can successfully defend themselves in court against CERCLA claims, the cost of that litigation alone could contribute to the ongoing water affordability challenge.

CERCLA liability will be an additional burden on top of the significant treatment costs utilities will incur to meet Safe Drinking Water Act and Clean Water Act PFAS regulations. CERLCA would unjustly make ratepayers pay yet again, now for the environmental remedial burden that should be borne by the companies that produced and profited from PFAS for decades.

With this proposed rule under final review this spring, it is critical that Congress move quickly to ensure that water systems and their ratepayers are not unfairly punished for PFAS contamination for which they bear zero responsibility or blame. **I therefore urge you to support the inclusion of S. 1430, the Water Systems PFAS Liability Protection Act, in any PFAS legislative package the Committee considers**. This bill would preserve the "polluter pays" principle under CERCLA and ensure that water utilities can continue to focus their efforts on maintaining water quality.

Again, we ask that you support S. 1430 and protect water systems and their ratepayers by providing statutory liability protections related to PFAS under CERCLA.

Sincerely,

Niki Iverson
General Manager