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ORANGE COUNTY WATER DISTRICT
ORANGE COUNTY'S GROUNDWATER AUTHORITY

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March 14, 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:

On behalf of the Orange County Water District (OCWD), I request that this letter be made part of the formal record for the Committee on Environment and Public Works' March 20, 2024 PFAS CERCLA Liability hearing. OCWD writes to address the issue of PFAS contamination and the U.S. Environmental Protection Agency's (USEPA) proposed rule to classify this family of chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). We understand that this proposed rule could be finalized as early as this spring. We request that you provide a legislative exemption for water and wastewater entities, along with their service providers, from CERCLA liability.

Entities responsible for PFAS pollution may attempt to transfer the liability and the cost of contamination cleanup onto water agencies like OCWD—and ultimately onto ratepayers—violating CERCLA's core principle that the polluter pays. It is acknowledged that water and wastewater agencies offer essential public health services in compliance with federal, state, and local mandates under the Safe Drinking Water and Clean Water Acts. These laws guide our activities and responsibilities. Imposing CERCLA retroactively on the water sector, which did not produce, generate, or benefit from PFAS, distorts the intent of CERCLA. Congress has previously granted CERCLA exemptions, and extending such an exemption to the water sector, which passively receives these chemicals, neither sets a precedent nor compromises public health. It is crucial to develop a CERCLA exemption to prevent a surge in litigation, which would place additional financial burdens on our ratepayers and absolve manufacturers and users of PFAS from their responsibility for cleanups, as Congress intended when it enacted CERCLA.

The Honorable Tom Carper and Honorable Shelley Moore Capito
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Currently, PFAS contamination impacts 11 water agencies within the OCWD service area, which includes disadvantaged communities (500,000 people). Although 62 of 200 wells were initially taken out of service due to PFAS, OCWD's proactive efforts have restored 35 of these wells at a cost of more than \$200 million in capital costs alone. However, with the U.S. EPA's impending PFAS maximum contaminant level (MCL) being set at 4 parts per trillion, about 40 additional wells are expected to require treatment adding \$240 million in capital costs.

Orange County water agencies, and ultimately the ratepayers, are confronted with costs exceeding \$1.8 billion for interim replacement water, capital, and operations and maintenance over 30 years to manage PFAS contamination.

The promptness of our response and the extensive scope of PFAS contamination have significantly strained our financial resources and affected local ratepayers. In FY 2022-23, OCWD increased its Replenishment Assessment (the per-acre-foot fee charged to cities and retail water districts for groundwater pumping) by 10%. This rate was further increased by 12% in FY 2023-24. We anticipate the need for additional rate increases of at least 10% annually over the next three years, which could exacerbate the ongoing challenge of water affordability.

As passive recipients of these pervasive chemicals, our plea for protection against baseless lawsuits is supported by prior exemptions from CERCLA liability, such as the liability exemption for Brownfields developers.

We strongly urge your support for swift committee approval of a water sector CERCLA liability exemption to safeguard our ratepayers and uphold the longstanding principle that the polluter pays.

Sincerely,



Cathy Green
OCWD Board President

cc:

Senator Alex Padilla, CA
Senator Laphonza Butler, CA