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March 13, 2024

The Honorable Chuck Schumer
Senate Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Senate Environment and Public Works
Committee Chair
United States Senate
Washington, DC 20510

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

RE: Olivenhain Municipal Water District Requests Support for Passive Receiver PFAS Liability Protection

Dear Majority Leader Schumer, Minority Leader McConnell, Chair Carper, and Ranking Member Capito,

Olivenhain Municipal Water District respectfully requests your support for PFAS liability protections for water and wastewater agencies under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that follow all applicable laws and regulations for PFAS. OMWD provides 87,000 customers in northern San Diego County with water, wastewater, recycled water, hydroelectric, and recreational services. Potential liability from a proposed CERCLA hazardous substance designation for PFOA and PFOS, and the associated costs, is a serious concern for our agency.

In September 2022, EPA published a proposed rule to designate PFOA and PFOS as hazardous substances under CERCLA. That rule is now in the final stages, currently at the Office of Management and Budget for review, and is expected to be finalized before the end of this month. Congress intended CERCLA to be a statute that would allow for the remediation of contaminated sites and ensure polluters are financially responsible for cleanup through the “polluter pays” model. OMWD strongly supports ensuring the CERCLA “polluter pays” principle remains intact. However, under current federal efforts, water agencies and their ratepayers will be facing a “community pays” outcome that unfairly shifts the cleanup and liability costs onto water agencies and the public they serve.



Public water and wastewater agencies are passive receivers of PFAS from a vast array of domestic, commercial, and industrial sources. Water systems, and the public, do not have control over PFAS in the environment given the overwhelming presence of this family of chemicals in the chain of commerce and in our homes.

Without an explicit exemption from liability under CERCLA, water systems could be held financially liable for the cleanup of Superfund sites contaminated with PFAS for merely fulfilling their responsibilities under the Safe Drinking Water Act to treat and dispose of these chemicals to protect public health. While we appreciated that EPA has shared that it does not intend to pursue water systems for cleanup costs, the CERCLA statute leaves those same systems vulnerable to litigation by polluters themselves through potentially responsible party (PRP) suits. Cleanup costs alone are daunting for many water systems; adding the financial implications of litigation would be overly burdensome for ratepayers.

We ask that the Senate consider and pass legislation that would protect water systems and uphold CERCLA's "polluter pays" principle. One example of this is Senator Cynthia Lummis' legislation, S. 1430, the Water Systems PFAS Liability Protection Act. This legislation would provide the protection that water systems desperately need to face the challenge of PFAS pollution with all the resources they can bring to bear. This legislation would protect water systems, as CERCLA intends, and put the burden solely on polluters – not ratepayers. This will allow water systems to focus on and allocate resources to accomplish their most important goal: providing safe, reliable, and affordable water service to ratepayers.

OMWD urges you to uphold CERCLA's "polluter pays" principle and protect water systems and the ratepayers they serve by supporting a tailored legislative exemption from PFAS liability. If you or your staff should need any additional details pertaining to this assessment, please do not hesitate to contact me at 760-753-6466 or kthorner@olivenhain.com.

Regards,



Kimberly A. Thorner
General Manager

cc: Senator Cynthia Lummis
Senator Alex Padilla
Senator Laphonza Butler