



SAN JOSE WATER

110 W. Taylor Street
San Jose, CA 95110-2131

March 8, 2024

The Honorable Tom Carper
Chairman
U.S. Senate Committee on
Environment and Public Works
513 Hart Senate Office Building
Washington, DC 20510

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

RE: CERCLA Exemption for Water and Wastewater Utilities

Dear Senators Caper and Capito,

As a leader in providing safe, high-quality and affordable water service, San Jose Water works daily to protect the families and communities we serve from the dangers posed by Per- and polyfluoroalkyl substances (PFAS). San Jose Water provides life-sustaining water service to approximately one million residents in the greater San Jose metropolitan area and has an exceptional record of compliance with federal and state health and environmental regulations. Our nearly 400 employees are proud to be part of the communities where they live, work, and serve and are eager to continue providing high-quality water service.

San Jose Water strongly believes that passive receivers of PFAS, particularly those providing public services and who neither manufacture nor use PFAS, should not be subject to liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for PFAS releases so long as all applicable rules and regulations were followed. Water utilities like San Jose Water have been at the forefront of protecting public health and the environment by proactively treating for PFAS, all at a significant expense. Because these public services are funded by the families who use them, this means that the brunt of these clean-up costs are being borne by people other than those who created the PFAS crisis.

San Jose 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 customers 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.

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 San Jose Water appreciates this sentiment, it is not binding on future administrations. 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 in order 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 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 filters by water and wastewater systems.

San Jose Water strongly urges you to pass a CERCLA exemption for all water and wastewater systems to protect customers from having to pay twice for PFAS cleanup.

Very truly yours,



John B. Tang
Vice President of Regulatory Affairs
& Government Relations