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ORANGE COUNTY WATER DISTRICT
ORANGE COUNTY'S GROUNDWATER AUTHORITY

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August 8, 2019

Chairman Adam Smith
House Armed Services Committee
2216 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Mac Thornberry
House Armed Services Committee
2216 Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 2500 – National Defense Authorization Act – Request for water and sanitation agency exemptions from amendments #48 and #440

Dear Chairman Smith and Ranking Member Thornberry:

On behalf of the Orange County Water District (OCWD; the District), I write to you to seek exemptions from Rep. Dingell and Rep. Pappas' amendments to the National Defense Authorization Act (H.R. 2500). These exemptions will help ensure that water and sanitation agencies are not disadvantaged as a side effect of legislation changes intended to address the sources of Per- and Polyfluoroalkyl Substances (PFAS).

The District strongly believes in holding polluters responsible for remediating the effects of PFAS pollution. Across the country, sources of drinking water have become tainted with PFAS, requiring community water systems to install costly new treatment processes to remove the contaminants. Similarly, wastewater systems receive a broad range of influent from numerous sources, some of which may include levels of PFAS, which must be treated, discharged, and – in the case of biosolids – properly managed via a variety of methods. However, drinking water and wastewater utilities are not the originators of PFAS, and should not be treated as such in legislation that attempts to hold polluters responsible.

The two amendments we request water and sanitation agency exemption from include:

- Amendment #48 sponsored by Chris Pappas (D-NH), which revises the list of toxic pollutants under the Federal Water Pollution Control Act to include PFAS. As a result, EPA would publish effluent and pretreatment standards.

The Honorable Adam Smith and Mac Thornberry
August 8, 2019
Page 2 of 3

- Amendment #440 sponsored by Debbie Dingell (D-MI), which requires the EPA to list PFAS chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Designating PFAS as a CERCLA hazardous substance would help communities that have a known responsible party with financial means to pay for clean-up. However, it could also create liability for many communities where such a known responsible party does not exist due to contamination associated with non-discrete sources such as runoff and residential sources. If Congress does designate PFAS as a hazardous substance under CERCLA, an exemption for water and wastewater treatment residuals should be included.

We agree with the intent of these amendments to hold polluters accountable for the cost of cleaning up PFAS contamination. However, as drafted, each of these amendments could result in drinking water and wastewater systems being designated as partially responsible parties under CERCLA, and thus responsible for PFAS cleanup costs. Drinking water systems which must dispose of filtration media or resin that includes PFAS could be held liable when those materials are deposited in landfills. And wastewater systems that discharge effluent containing PFAS that passed through the treatment system – or manage biosolids containing PFAS – could also be treated as polluters even though they had no hand in creating the chemicals in the first place. The cost of cleanup liability incurred by water and wastewater systems would be passed on to millions of local customers across the country.

For these reasons, we support making polluters pay to address PFAS pollution, but we respectfully request that water and sanitation agencies are exempted from the above amendments to H.R. 2500. Please feel free to contact OCWD Legislative Affairs Liaison Alicia Dunkin at (714) 477-3750 or adunkin@ocwd.com, or me, if you have any questions.

Sincerely,

Vicente Sarmiento, Esq.
President

cc: Senator Dianne Feinstein (CA)
Senator Kamala Harris (CA)
Senator Jim Inhofe (OK)
Senator Jack Reed (RI)
Senator John Barrasso (WY)
Senator Tom Carper (DE)
Congresswoman Linda Sánchez (CA-38)

The Honorable Adam Smith and Mac Thornberry
August 8, 2019
Page 3 of 3

Congressman Gil Cisneros (CA-39)
Congresswoman Katie Porter (CA-45)
Congressman Jose Luis Correa (CA-46)
Congressman Alan Lowenthal (CA-47)
Congressman Harley Rouda (CA-48)
Congressman Mike Levin (CA-49)
Congressman Frank Pallone (NJ-6)
Congressman Greg Walden (OR-2)