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ORANGE COUNTY WATER DISTRICT

ORANGE COUNTY'S GROUNDWATER AUTHORITY

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January 21, 2020

Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

RE: H.R. 535 PFAS Action Act of 2019 - Concern

Dear Senator Feinstein:

The Orange County Water District (OCWD; the District) would like to bring to your attention its concern with H.R. 535, the PFAS Action Act of 2019, sponsored by Congresswoman Debbie Dingell. This legislation passed the House and may cause OCWD to be liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for Per- and Polyfluoroalkyl Substances (PFAS) should this family of chemicals become classified as a hazardous substance. To address this concern, the District respectfully requests that any final legislation contain an exemption for wastewater and water districts that handle water found to contain PFAS.

A water utility that properly disposes of residuals containing PFAS, in a manner consistent with applicable laws, must not be held liable for future costs associated with PFAS cleanup. Without an exemption, water treatment facilities like the District's own Groundwater Replenishment System (GWRS) could be held liable for the PFAS that is removed from the water.

The District believes that Congress must make a distinction between entities that introduced PFAS into the environment, and water and wastewater systems that are on the front lines of cleaning up the contamination. Utilities are not the producers of PFAS, but the receivers of PFAS. A water system that follows all applicable laws in its management of water treatment byproducts containing PFAS should not be held liable under CERCLA for any further environmental cleanup costs related to these chemicals. Doing so would penalize customers twice: when they make investments to remove PFAS from their waters, and again when they are forced to pay to clean up PFAS contamination elsewhere.

OCWD is doing the good work of taking PFAS out of drinking water through reverse osmosis. However, disposal and discharge of reverse osmosis concentrate (the leftover

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water from the treatment that is non-reclaimable) must be able to continue to be discharged to the ocean without additional potentially infeasible regulations.

Also, OCWD currently utilizes approximately 65,000 acre-feet of upstream Santa Ana River wastewater for groundwater recharge, or enough water for 520,000 people per year. The District would like an exemption from CERCLA to ensure that it is not limited in recharging Santa Ana River water into the Orange County Groundwater Basin if PFAS is listed as a hazardous substance under CERCLA.

The manager's amendment included in H.R. 535 offered a CERCLA liability shield to airports that are required to use firefighting foam containing PFAS. The District asks that this same protection is afforded to water and wastewater systems which may be required to remove and dispose of PFAS. As receivers of PFAS, water and wastewater utilities should be afforded the same liability protections that airports are being awarded in the legislation.

For the above reasons, OCWD would like to respectfully request an exemption for water and wastewater agencies if PFAS is listed as a hazardous substance under CERCLA. Please do not hesitate to contact Alicia Dunkin, Legislative Affairs Liaison, at adunkin@ocwd.com or (714) 378-8232, or me, if we may be of any assistance.

Sincerely,



Vicente Sarmiento, Esq.
President

cc: Senator Kamala Harris
Congresswoman Linda Sánchez (CA-38)
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)