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**ORANGE COUNTY WATER DISTRICT**  
ORANGE COUNTY'S GROUNDWATER AUTHORITY

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Submitted electronically: regulations.gov at docket EPA-HQ-OLEM-2019-0341

November 7, 2022

Barry Breen  
Acting Assistant Administrator, Office of Land and Emergency Management  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**RE: Proposed Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFAS) as CERCLA Hazardous Substances**

Dear Mr. Breen:

Orange County Water District (OCWD; the District) writes to request that the United States Environmental Protection Agency (USEPA) not expose innocent water agencies to PFAS cleanup liability and weaken the polluter pays principle in CERCLA by listing Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFAS) as CERCLA Hazardous Substances at this time, and without taking steps not included in the current proposal to protect innocent water agencies and ratepayers. By delaying the CERCLA proposal until a proper regulatory framework is put in place, water agencies can be appropriately protected. In addition, the District requests USEPA conduct a full regulatory impact analysis before moving forward.

PFAS is a critical issue estimated to cost water providers, and ultimately ratepayers, in Orange County, CA more than \$1 billion over 30 years. Despite playing no role in releasing PFAS into the environment, agencies like OCWD must find ways to remove it from local water supplies. In a proactive effort to address this issue, OCWD established the nation's largest PFAS pilot program and implemented a board policy to fund 100% of the design and construction of treatment plants and share the operations and maintenance costs with its retail agency partners. Nineteen PFAS treatment plants, including the nation's largest at the Yorba Linda Water District, are already operating in the OCWD service area.

Groundwater from OCWD comprises most of the water supply in our service area, with some water providers relying on it for 100% of their supply. Currently, 11 of the water agencies we serve (cities of Anaheim, Santa Ana, Fullerton, Garden Grove, Tustin, and Orange; East Orange County, Yorba Linda, Serrano and Irvine Ranch Water Districts; and the Golden State Water Company) are impacted by PFAS and a total of 59 wells require treatment—this number may increase through additional testing and lower future regulatory standards. All but two of these

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wells are located within disadvantaged communities and will have a significant financial impact to low-income ratepayers.

**Do not abandon the polluter pays principle in CERCLA**

The USEPA's reliance on enforcement discretion is not a shield for taxpayer and ratepayer entities and will not protect public water systems from liability if PFAS is listed as a hazardous substance under CERCLA. To date, USEPA's enforcement discretion under CERCLA has not provided protection to public water systems, municipality, and similar entities that were sued historically under CERCLA's strict, joint, and several liability by responsible parties for alleged involvement in the "transport" of hazardous substances through regular water and wastewater operations. In response, OCWD is seeking legislative liability protection from Congress for water and wastewater agencies. A water utility that complies with applicable and appropriate federal management and treatment standards must not be responsible for current and future costs associated with a PFAS cleanup via CERCLA's strict, joint, and several liability scheme.

**Include cost-benefit analysis and public input in developing drinking water standards**

We also ask that the USEPA follows its PFAS Strategic Roadmap that states a national primary drinking water regulation (NPDWR) should be developed relying on sound science and that the development of such rules adhere to the Safe Drinking Water Act's standards setting procedures that includes cost-benefit analysis and public input as a component in the development of drinking water standards for PFOA and PFOS. If the USEPA proceeds with the rulemaking under CERCLA, OCWD requests USEPA conduct a full regulatory impact analysis before moving forward that includes cost-benefit analysis.

Thank you for your urgent attention to our requests. Should you have any questions or need further information, please contact me at [mmarkus@ocwd.com](mailto:mmarkus@ocwd.com) or Legislative Affairs Liaison Alicia Dunkin at (714) 477-3750 or [adunkin@ocwd.com](mailto:adunkin@ocwd.com).

Sincerely,



Michael R. Markus, P.E., D.WRE.  
General Manager