



Agenda Report

Fullerton City Council

MEETING DATE: NOVEMBER 16, 2021

SUBMITTED BY: STEVE DANLEY, ACTING CITY MANAGER

PREPARED BY: MEG MCWADE, PUBLIC WORKS DIRECTOR
MATT LIGHTNER, ADMINISTRATIVE ANALYST II

SUBJECT: SUPPORT OF FEDERAL PFAS LEGISLATION THAT
PROTECTS RATEPAYERS AND WATER /
WASTEWATER AGENCIES

SUMMARY

Consideration of a resolution supporting the Orange County Water District (OCWD) legislative platform: CERCLA exemption for water / wastewater agencies that simply receive and treat for Per- and Polyfluoroalkyl Substances (PFAS); continued use of cost-benefit analysis in the establishment of future drinking water standards and request to provide funding for PFAS remediation to water / wastewater agencies.

BUDGET POLICY PRIORITY STATEMENT

This item matches the following Budget Policy Priority Statement:

- Fiscal and Organizational Stability.

RECOMMENDATION

Adopt Resolution No. 2021-XX.

RESOLUTION NO. 2021-XX – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, SUPPORTING FEDERAL PFAS LEGISLATION THAT PROTECTS RATEPAYERS AND WATER / WASTEWATER AGENCIES

FISCAL IMPACT

There is no fiscal impact with respect to approval of this specific resolution. There are potential cost increases or savings based on the individual elements of the legislative platform. Based on recent proposed legislation, the City could face CERCLA liability for simply receiving and treating PFAS which would significantly increase costs. Additionally, should the cost-benefit analysis element of establishing water quality

regulations be removed, the City could face significantly increased costs, depending on the water quality constituent, borne by our ratepayers. Finally, the City could benefit from potential Federal funding opportunities for PFAS treatment, either directly as a producer or indirectly through OCWD.

DISCUSSION

PFAS Background

Per- and polyfluoroalkyl substances, which includes Perfluorooctanoic acid (PFOA) and Perfluorooctane Sulfonate (PFOS), are a large group of synthetic fluorinated organic chemicals used in many industries since the 1940s. Deemed the “Forever Chemical,” the unique chemical structure of PFAS make them exceptional surface-active agents for municipal, consumer and industrial products, with over thousands of compounds produced globally.

PFAS is essentially any product that is non-stick or water resistant. An example would be certain cooking pans, cleaning products and other similar products. The chemical properties of PFAS make them highly soluble, mobile and difficult to remove through chemical and biological processes employed in conventional water and wastewater treatment. Based on these properties, PFAS have been detected around the globe in groundwater and drinking water sources. Citizens across the country have had exposure to PFAS due to its exposure in our water system. Continued exposure to PFAS may result in adverse health effects according to the Environmental Protection Agency.

Current PFAS Mitigation

The Orange County Water District manages the Orange County Groundwater Basin that supplies 77% of the water supply to 2.5 million people in north and central Orange County, including Fullerton. On April 20, 2020, City Council passed a resolution to execute a 30-year PFAS Treatment Facility and Program Agreement with the OCWD. The agreement provides funding from OCWD for construction of necessary PFAS treatment plants and a portion of ongoing operational and maintenance costs for impacted Fullerton water wells. The City of Fullerton, in partnership with OCWD, constructed and began operation of the first PFAS treatment plant in Orange County.

Legislative Position Overview

The OCWD has developed a legislative platform related to PFAS treatment and water quality regulations which the City should consider supporting. The platform has three tenets: 1) exemption from CERCLA liability for water / wastewater agencies, 2) inclusion of the long-standing cost-benefit analysis in development of water regulations and 3) funding for PFAS treatment.

In 1980, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) created a tax on organizations that release hazardous substances which could endanger the public health or the environment. This includes the release of PFAS into the environment. Under its current language, H.R. 2467 would levy this tax on local water agencies. This means that an agency like Fullerton that simply receives and

treats water supplies, would have across-the-board liability for PFAS-related cleanups when the City has no responsibility for the presence of PFAS. The attached draft resolution supports changing the language of the current legislation to include an exemption for local water agencies and well operators, including the City of Fullerton.

There have been potential amendments in recent months to the Safe Drinking Water Act that delete the long-standing cost benefit analysis. Under existing law, the USEPA ensures that public health benefits of new drinking water standards are reasonably balanced with the compliance costs that water system ratepayers will ultimately incur. Eliminating this analysis would burden ratepayers of all income levels with substantial costs to comply with drinking water standards. As a result, the attached resolution supports the inclusion of cost-benefits analysis in the future water quality rulemaking process.

The final element of the legislative position supports Federal Government efforts to provide funding for PFAS remediation to water and wastewater agencies. Upon approval of the resolution, the City will send letters to various legislators requesting support for the platform.

Attachments:

Attachment 1 – Resolution No. 2021-XX