WUWC
WESTERN URBAN WATER COALITION

July 16, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S House of Representatives
Washington, DC 20515

The Honorable Peter A. DeFazio
Chairman
Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable Sam Graves
Ranking Member
Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

RE: Concerns with H.R. 2467 and H.R. 3291

Dear Chairmen and Ranking Members:

The Western Urban Water Coalition (WUWC) respectfully submits this letter as you consider the PFAS Action Act of 2021 (H.R. 2467) and the Assistance, Quality and Affordability Act of 2021 (H.R. 3291). Our comments below concern provisions in these bills addressing per- and polyfluoralkyl substances (PFAS). WUWC appreciates your consideration of this request even though H.R. 3291 recently passed the House as part of the INVEST in America Act (H.R. 3684).

WUWC is a coalition of 18 of the largest western water utilities[1] formed more 30 years ago to address the unique water issues facing the western United States. Its members serve over 40 million water consumers in major metropolitan areas in seven western states. The issue of PFAS in drinking water supplies is an important matter that warrants Congressional attention, and we support the goal of establishing science-based regulatory mechanisms to address the problem and protect public health.

WUWC has two key concerns with these proposals, echoing issues raised by other major water organizations as well as WUWC's prior comments on proposed PFAS provisions of the FY 2020 National Defense Authorization Act:

Responsibility for PFAS contamination should rest with PFAS polluters, not water utilities.

The PFAS Action Act advanced by the House Energy and Commerce Committee would subject local drinking water and wastewater treatment utilities and their ratepayers to financial liability for environmental PFAS cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). While the legislation waives CERCLA liability for airports, the Committee rejected an amendment that would have provided a similar exemption to community water systems, including drinking water and wastewater treatment facilities. WUWC cannot support designating PFAS as a CERCLA hazardous substance without protection for community water systems.

As a general principle, federal regulation of PFAS should not hold community water systems liable for the contamination of water supplies by PFAS. Water utilities are the "receivers" of PFAS from upstream industrial and other sources and do not themselves create or produce PFAS. Water utilities must dispose of the residuals generated by the water and wastewater treatment processes, and PFAS from upstream sources are retained in these residuals. Liability should rest with those original PFAS sources. The PFAS Action Act would subject community water systems to financial liability even where they had followed all applicable laws and regulations related to PFAS disposal.

Congress should ensure that CERCLA does not become a tool to penalize water utilities that properly dispose of PFAS residuals. Ultimately, the costs associated with CERCLA liability would be borne by utilities' customers, requiring them to pay for the PFAS contamination problems created by manufacturers and other parties. Imposing PFAS liability on water utilities would thus interfere with our ability to serve customer needs efficiently and cost-effectively.

As explained below, legislative and regulatory requirements for PFAS should be based on the Safe Drinking Water Act and other environmental laws. In the event Congress does designate PFAS as hazardous substances under CERCLA, then it should create a clear and express

[1] WUWC was established in 1992 to address the West's unique water supply and water quality challenges, and consists of the following members: Arizona (Central Arizona Project, City of Phoenix and Salt River Project); California (Eastern Municipal Water District, City of Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, Santa Clara Valley Water District, and City and County of San Francisco Public Utilities Commission); Colorado (Aurora Water, Colorado Springs Utilities, and Denver Water); Nevada (Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority); New Mexico (Albuquerque Bernalillo County Water Utility Authority); Utah (Salt Lake City Public Utilities); and Washington (Seattle Public Utilities).

exemption from CERCLA's liability scheme for water and wastewater systems and operations that do not cause, create or produce PFAS contamination.

Congress should not circumvent existing regulatory programs best suited to address this issue.

We appreciate the PFAS grant provisions included in the Assistance, Quality and Investment Act. Section II of that bill, however, contains a problematic provision that would diverge from the Environmental Protection Agency's (EPA) Safe Drinking Water Act (SDWA) regulatory process. The PFAS Action Act and Assistance, Quality and Affordability Act would similarly establish a unique and expedited regulatory process under the SDWA. The drinking water industry has long maintained that any regulatory standard must consider economic and technological feasibility, including analytical capabilities and treatment options, as well as provide opportunities for stakeholder involvement.

Any regulatory determination for PFAS should follow the standards and processes outlined in the SDWA. The SDWA applies a science-based, data-driven, peer-reviewed process to the development of drinking water regulations. Establishing an alternative approach for PFAS, as Section II does, could lead to premature regulatory determinations lacking in transparency and scientific validity.

EPA regulates more than 90 drinking water contaminants under the SDWA but does not currently have a maximum contaminant level for PFAS. Congress should ensure that EPA has adequate funding and other resources as it evaluates potential thresholds for PFAS under the established SDWA regulatory determination process and the PFAS Action Plan. This means adequate resources to fund research and reach science-based decisions, develop policy and associated public engagement, and be a partner in state implementation. Adherence to the SDWA process will maintain consistency in standard-setting and reduce the risk and delay of costly litigation while ensuring the public's confidence in their drinking water.

Source control must also be a key component of any program to address PFAS. While many companies are voluntarily phasing out certain PFAS in the United States, PFAS and products containing PFAS are still being manufactured internationally and imported to the country. Congress and regulatory agencies should rely on all applicable environmental laws to reduce and control the introduction of PFAS into the environment. For example, the Toxic Substances Control Act review process should be used to understand the risks posed by PFAS.

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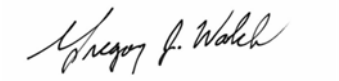
Our members are experienced, on-the-ground partners with EPA and the states in the implementation of the SDWA, Clean Water Act, and other authorities. Based on this experience, WUWC is prepared to assist the members of Congress, EPA, and other regulatory agencies in addressing this important issue. We look forward to continued dialogue and collaboration on legislative and regulatory initiatives.

Thank you for the opportunity to provide these comments. For more information, please contact me at (702) 258-7166 or greg.walch@lvvwd.com or WUWC's national counsel, Don Baur, at (202) 654-6234 or dbaur@perkinscoie.com.

Very truly yours,



Gregory J. Walch
Chairman