



May 31, 2024

Cathy McMorris Rodgers, Chair
Frank Pallone, Ranking Member
House Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Sam Graves, Chair
Rick Larsen, Ranking Member
House Transportation and Infrastructure Committee
United States House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

RE: Support for the Water Systems Liability PFAS Protection Act (H.R. 7944)

Dear Committee Leaders:

The Western Urban Water Coalition (WUWC) writes to show support for the Water Systems Liability PFAS Protection Act, H.R. 7944. WUWC is a coalition of 20 of the largest western water utilities¹ formed more than 30 years ago to address the unique water issues facing the western United States. Its members represent approximately 40 million water consumers in major metropolitan areas in seven western states whose operations and treatment facilities are affected by federal per- and polyfluoroalkyl substances (PFAS) regulations.

WUWC appreciates that regulation of PFAS is appropriate and necessary in many cases to address their potential human health and environmental impacts, but at the same time such action could have significant and troubling consequences for water utilities unless the federal government takes all appropriate action to dampen the inequitable burdens on water utilities and their ratepayers. Unlike manufacturers, distributors, and other entities in the PFAS production

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, East Bay Municipal Utility 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 County Water Conservancy District); and **Washington** (Seattle Public Utilities).

and supply chain, water utilities did not introduce PFAS into commerce or profit from their widespread use. Instead, water utilities operate treatment facilities at substantial capital, operational, and maintenance costs to treat source waters so that they are safe for human consumption and other uses.

PFAS designation under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) will have far reaching implications and severe unintended consequences on water systems that have played no role in producing, using, or profiting from PFAS being placed into commerce. Public water systems could incur significant liability as potentially responsible parties (PRPs) simply due to routine and necessary water storage, transportation, and treatment activities. Water utilities receive PFAS in their water from upstream industrial and other sources and do not themselves create or produce PFAS. PFAS are present in the environment in quantities and frequencies higher than previously anticipated. Because of the ubiquity of PFAS, it is unavoidable that public water systems will continue to passively receive and then have to store, transport, and treat water containing PFAS that have been circulating in the environment for decades.

As standard practice, water utilities remove contaminants through filtration media to process water for human consumption or reuse. They then properly dispose of PFAS retained in solids resulting from water treatment and in media used in the treatment process in accordance with applicable law. However, under CERCLA's strict joint, several, and retroactive liability scheme, any party who disposes of hazardous substances, even in minute quantities, and even if the disposal was legal at the time, may be considered a PRP and could be held liable for the entire cleanup of a site (when the harm caused by multiple parties cannot be separated). It is also not a defense to CERCLA liability that a PRP was not negligent or that it was operating according to industry standards. Therefore, if a site designated as a facility subject to CERCLA contains trace amounts of PFAS-contaminated material from standard water processing practices, water systems and their ratepayers could incur significant liability, even if the majority of the site's pollution came from other sources. This pattern has the potential to repeat nationwide, unintentionally exposing water utilities—and therefore the public, who must pay higher rates as a result—to significant potential liability and cleanup costs.

PFAS contamination is also more likely to be found in water systems drawing from groundwater and surface water in proximity to industrial polluters, CERCLA liability will disproportionately affect ratepayers from environmentally disadvantaged communities, meaning that ratepayers in these same communities are more likely to bear the financial burden of passed-through costs from increased reporting, treatment, and capital upgrades by water utilities. Shifting cleanup costs onto these most vulnerable ratepayers would establish regressive policy that directly contradicts promoting environmental justice.

WUWC appreciates EPA's enforcement discretion guidance, but this discretion still leaves water utilities vulnerable to lawsuits through potentially responsibly party suits and risks future changes in policy. The introduced Water Systems Liability PFAS Protection Act (H.R. 7944) would protect water utilities and their ratepayers from these risks by shielding them from CERCLA liability. Water utilities did not create a profit from PFAS, and liability should rest instead with those original PFAS sources.

Our members are experienced, on-the-ground partners with EPA and the states in ensuring the safety and reliability of public water supplies. Based on this experience, WUWC fully supports this legislation.

Thank you for the opportunity to provide this letter. For more information, please contact me at (303) 739-7378 or mbrown@auroragov.org or WUWC's national counsel, Ted Boling, at (202) 661-5872 or TedBoling@perkinscoie.com.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'M. P. Brown', with a stylized flourish at the end.

Marshall P. Brown
Chairman