



**MEMORANDUM**

TO: Clackamas County Board of County Commissioners (BCC)  
Sitting/Acting as the Clackamas Water Environment Services Board of Directors

FROM: Tonia Holowetzki, Interim Director

RE: Letter of Support

DATE: March 27, 2024

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**REQUEST:** Clackamas Water and Environment Services (WES) is asking the Board's approval to submit a letter in support of S. 1430, federal legislation that affords liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for municipal wastewater and stormwater systems across the U.S.

**BACKGROUND:** WES is greatly concerned about the financial and regulatory implications of nationwide discussions about how best to address the issue of forever chemicals such as PFAS. S. 1430 provides some protections to agencies like WES, who is a recipient (not creator) of PFAS.

This legislation fits within the county's federal principles to promote science-based and ratepayer-minded water quality protections, as well as maintaining the county's financial sustainability and advocating against unfunded mandates.

**RECOMMENDATION:** Staff recommends the Board approve the letter of support, to be signed by Chair Smith on behalf of the Board of Directors.

Respectfully submitted,

Tonia Holowetzki  
Interim Director, Public & Government Affairs

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Hon. Senator Mr. Merkley  
Hon. Senator Mr. Wyden

Dear Senators Merkley and Wyden:

On behalf of its ratepayers in Clackamas County, Oregon, the Clackamas County Commission, serving as the Board of Directors of Water Environment Services (WES), requests your support for the **S. 1430 Water Systems PFAS Liability Protection Act**, which affords liability protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for municipal wastewater and stormwater systems across the U.S.

WES's mission is to protect human health and the environment. While agencies like ours are *passive* receivers of PFAS, meaning we do not manufacture these chemicals or use them in the treatment process, we know we must do our part to identify potential sources. We are committed to working with our communities and industries to reduce PFAS *before* they get into our treatment plants because they're nearly impossible to remove once they do.

CERCLA was built on a "polluter pays" principle—envisioned as holding companies that produced and profited from hazardous substances discharged into the environment be responsible for their cleanup. This principle is laudable but unfortunately the proposed designation of PFOA and PFOS, non-degradable "forever chemicals" that are now ubiquitous in the environment, means that public water systems that passively receive these substances into their systems could face significant CERCLA cleanup liability. As a water utility striving to provide a safe, affordable public service to our ratepayers, we are concerned that EPA's proposed designation of PFOA and PFOS as hazardous substances under CERCLA will cause water systems and *our ratepayers rather than polluters* to incur environmental cleanup liability. While EPA has indicated a policy of reasonable enforcement discretion for clean water agencies, their policy does not, and by law cannot, protect us from third-party lawsuits for cleanup actions. CERCLA liability will be an additional burden on top of the significant challenges public utilities will face in meeting Safe Drinking Water Act and Clean Water Act PFAS regulations.

We urge to you support S. 1430 to protect water system ratepayers by providing statutory liability protections related to PFAS under CERCLA.

Thank you.

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